DEMOCRATIC DEVELOPMENT STUDIES

DEMOCRACY IN PERU: A HUMAN RIGHTS PERSPECTIVE

Gladys Acosta
Javier Ciurlizza

INTERNATIONAL CENTRE FOR HUMAN RIGHTS
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Gladys Acosta
Javier Ciurlizza

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GLADYS ACOSTA *(Cusco, Peru, 1951) is a lawyer and holds an MA in sociology. She is coordinator and member of the Board of the "Gender and Power" programme of the Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) in Bogota, Colombia. She is the former General Director of the Flora Tristan Women's Centre in Peru. She is a consultant for UNIFEM, UNICEF, the United Nations' Institute for Development in Latin America, and the Interamerican Institute for Human Rights. She is also a member of the Advisory Committee of the Project Counceling Service for Latin American Refugees, with particular responsibility for gender issues.*

JAVIER CIURLIZZA *(Tumbes, Peru, 1966) is General Secretary of the Andean Commission of Juristo. He was Assistant Director of the National Human Rights Coordinating Body from 1991 to 1994. He is a consultant to the Radda Barnen Foundation of Switzerland and to the Catholic Relief Services.*

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© International Centre for Human Rights and Democratic Development
63, de Brésoles, Montreal (Quebec), H2Y 1V7, CANADA
Tel: (514) 283-6073 - Fax (514) 283-3792 - E.mail: ichrdd@web.net

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Preface

The International Centre for Human Rights and Democratic Development was created by an Act of the Parliament of Canada and officially inaugurated on October 19, 1990. It aims to defend and promote the rights and freedoms enshrined in the *International Bill of Human Rights* and encourage the development of democratic societies. Although it enjoys a collaborative working relationship with the Government of Canada on many issues, the Centre operates as an independent and non-partisan institution. It works closely with citizens' groups, international organisations and governments around the world to strengthen civil societies and empower people to participate fully in the social, economic and political lives of their countries. Presided over by the Honourable Warren Allmand, the Centre is governed by a 13-member international Board of Directors, chaired by Ms. Lois Wilson.

Through its Canadian and overseas partners, the Centre provides financial, political and technical support to front-line organisations to help establish democratic institutions and practices. It plays an advocacy and educational role, both in Canada and abroad, speaking out about human rights abuses and advocating policies to reduce their occurrence. The Centre has been active in global campaigns to restore democracy to Haiti and Burma, recognise women's rights as human rights and integrate human rights into international trade agreements.

The Centre considers the strengthening of civil society indispensable to democratic development because, in its view, there can be no fully democratic society without a strong civil society permeated by a culture of tolerance. Strong civil societies have four major characteristics: a) the poor are organised and exercise political influence; b) associations are politically independent of the state, c) a culture of tolerance prevails, and d) substantive equality of access to the political process exists for all groups regardless of gender, race, class, etc.

In a democratic political system, emphasis is put on representation, formal processes and institutions, such as political parties, elections and legislatures. In a democracy considered as a model of society, human rights are seen as vehicles to advance equality of condition, not simply of opportunity. In this sense, the building of civil society, expansion of democratic space, popular participation, effective control of the public agenda, just distribution of resources, and civilian control of the military futhers progress towards democracy. The state must play an active role in building and maintaining these democratic institutions and practices. Amongst the important measures a state may take are ensuring the implementation of the whole family of human rights as expressed in the internationally-recognised human rights instruments.

In short, a real democratic society is one in which all human rights are implemented and fully respected, not only civil and political rights but economic, social and cultural rights as well.

This approach makes human rights and democracy part of the same agenda for society. Human rights, in this view, are not simply a measure of democracy: they are constitutive of democratic societies. Historically, movements for the recognition of rights have defined and built democratic institutions. Even in today's so-called "established democracies", debates over new categories of

rights challenge democratic institutions and force them to change. The examples here of women's rights and indigenous rights are eloquent.

Using an analytical framework based on international human rights instruments, the Centre undertakes democratic development studies and fora in order to identify, in collaboration with its partners, national priorities for democratic development. The methodology used in the studies is based on five categories of internationally-recognised human rights. These categories are: security rights, participation rights, welfare rights, non-discrimination rights and collective rights. In addition, this methodology assesses political institutions and rule of law. The Convention on the Elimination of all Forms of Discrimination Against Women is included as a key component of this assessment, since gender equality is fundamental to democracy. The methodology aims to be both universal and flexible, applicable to any country situation.

We hope that the results will be useful to all those working to advance democratic change, be they governments, elected representatives, civil society associations, or international actors. The Centre welcomes your critical comments on its approach.

Introduction

To analyze the reality of a country as complex as Peru requires adopting an integrated approach to the unfolding of the most important events of recent years. For this reason, the authors have proposed an analysis based on fundamental consensual concepts regarding human rights, democratic institutions and civil society.

This paper, "Democracy in Peru: A Human Rights Perspective," takes into account a previous study carried out in 1994 by Nicolás Lynch, Pepi Patron and Gladys Acosta, entitled "Sobre la gobernabilidad democrática y los Derechos Humanos en el Peru." Terms of reference drawn up by the International Centre for Human Rights and Democratic Development of Canada in 1993 were used for this study.[1] This theoretical framework is based on the conceptualization of human rights that emerged from the World Conference on Human Rights.

The authors have updated specific information through bibliographic survey and by means of interviews with grassroots leaders, development professionals, leaders of non-governmental organizations and social groups, as well as with Members of Congress and government officials.[2]

This study analyzes the difficulties Peru's political regime faces in fulfilling its international commitments regarding human rights, in consolidating its public institutions and broadening the democratic aspects of the state and society. The study also lays out the principal challenges faced by Peruvian civil society if it is to take up its role in the process of democratic development. The conclusions and recommendations presented are not intended to be the final word, rather proposals to initiate a democratic dialogue that favours consolidation of the positive trends currently in existence and to reverse those that threaten democracy and respect for human rights.

This implies making an effort to perceive the potential of the most dynamic groups and to support those areas for democratic mobilization that have a real capacity for action, both in order to promote a political and civic culture inspired by human rights and to encourage the transformation of state or private structures that comit or condone human rights violations.

This study does not contain an exhaustive description of facts linked to the subject at hand. The intention is to illustrate the analyses with relevant facts in order to bring to light, as far as possible, the country's current capacity to develop democratic mechanisms and full respect for internationally recognized human rights.

For this reason, the paper begins with a reflection on the major events in the historic and political evolution of Peru, particularly those which occurred in the period between April 1992 and July 1996.[3] Choosing that period for the bulk of the analysis does not mean a more global reflection

1 Gillies D., "Human Rights and Democratic Governance: A Framework for Analysis and Donor Action", Montreal: International Centre for Human Rights and Democratic Development, 1993.

2 Bibliographic references and a list of persons interviewed can be found at the end of this paper.

3 An effort has been made to incorporate events up to December 1996, although the overall analysis reflect events to July 1996.

on Peruvian history will be omitted, but the intensity of events over the past four years requires greater explanation. The historical introduction leads to an overview of the theoritical framework employed.

An analysis of the context in which human rights violations take place in Peru, as well as the challenges and potential for the work of human rights activists and defenders, is the subject of the second chapter. The years of political violence demand that rights of security be given privileged treatment, but this does not impinge on a general analysis of rights of well-being and participation, the latter with a focus on civil society in relation to the potential for public influence on policy. In the same regard, the chapter offers an overview of the particular situation of the country's indigenous peoples.

The development of democratic institutions, especially the evolution of the Peruvian state between 1993 and 1995 is the focus of the third chapter, enumerating the advances and setbacks in the reform of the justice system as an example of the limits of the state reforms currently underway.

The paper concludes with proposals for debate on promoting human rights and democratic development in Peru. Some subjects are omitted and others are only touched on briefly. In order to maintain an overview, the authors have chosen to limit their focus to the dilemmas facing Peru today that are central to the debate.

The authors would like to express their sincere thanks to everyone—individuals, institutions and organizations—who made this study possible, particularly those who kindly and openly agreed to be interviewed at length. In addition, we would like to thank the International Centre for Democratic Development and Human Rights for its unflagging support and for the valuable suggestions and commentaries offered with patience and consistent good will.

Lima, December 1996

Historical and Theorical Framework

1.1. A Bit of History

The changes that have occurred in Peru over the past forty years converged in a nearly cataclysmic crisis during the decade of the 1980s. Peru's erratic economic history was always based on the absence of national investment and savings, on the pillage of the nation's resources and on a government marked by frequent military intervention. The changes of the 1980s wrought the breakdown of traditional social structures which had been based on semi-feudal forms of subordination. At the same time, millions of Peruvians participated in a rapid process of internal migration that altered in substantial and definitive ways the relationship between city and country.

Peru, a country of over 22.5 million inhabitants, is today facing the weakening of the foundations of its democratic system, and that seriously hampers the state's capacity to develop policies which respect international standards in human rights. The internal armed conflict, raging since 1980, undercut democratic institutions and served to justify the intrusion of the Armed Forces in normally civilian duties. Following the "self-coup" of April 5, 1992 carried out by President Alberto Fujimori, a system of restricted democracy has been sought as a means of trying to resolve the serious problems faced by Peruvian democracy at the end of the last decade and the beginning of the current one.

The origins of the democratic crisis can be traced to long before the "self-coup" of 1992. It can be attributed in large part to the difficulties civil society encounters when seeking participation and representation in the state. These difficulties were evident in all their magnitude while the Constitution of 1979 was in force. That constitution was pivotal in Peruvian politics because it expressed, on the one hand, the great broadening of citizenship that emerged from the social movements of the 1970s, and, on the other, the incapacity of the constitutional system and of particular political actors to make representative democracy viable.

By the great broadening of citizenship, we refer to the emergence of a civil society made up primarily of popular organizations which developed with particular impetus during the decade of the 1970s. That civil society grew stronger through a process of social emancipation that produced a deep-rooted awareness of both social and political rights.[4] At the same time, this emancipation was expressed in a democratization of social relations and a significant increase in new civil society organizations and institutions which gave voice to the demands of the population regarding its basic needs.[5]

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4 Arato and Cohen, 1992.

5 In the political arena this broadening of citizenship entailed an expansion of suffrage. Such rights, limited to the ability to vote periodically, were granted without restriction for voters and political tendencies only as of the Constitution of 1979, which extended the vote to all citizens over 18 years of age, including the illiterate.

However, the granting of rights was not accompanied by the design of effective mechanisms for citizen participation which would reduce the distance between the institutions of civil society and the sphere of political society. The new social movements were fragmented, limited to certain sectors and distanced from the political sphere. Similarly, the political actors (principally parties) in their role of government or opposition, were not capable of representing this great broadening of citizenship, since they conceived of themselves more as machinery for the promotion of leaders and for ministering to a particular political clientele than as means for translating the will of the people into policy. In other words, they placed the particular interests of the individuals directly involved in the political process over the general interests of the electorate.

The 1980s frustrated the social and economic expectations generated during the previous decade. Levels of extreme poverty increased and the majority of the economically active population was excluded, creating the conditions for the emergence of the "Shining Path".[6] The profound disintegration of social organizations limited their immediate potential for articulating the demands of the people and therefore eventually to become new political alternatives.

The internal war initiated by the Communist Party of Peru "Shining Path" came at the same time as a galloping economic crisis which deepened in 1988. By the beginning of the 1990s, the country had reached the end of its rope.[7]

1.2. Peru in 1996

In 1996 several contradictory aspects of Peru's efforts to achieve modernization based on the logic of the country's insertion into the world economy were evident.[8] The solidity of the regime rested on the catalytic strength of one leader, President Fujimori, without real democratic checks and balances. Reelected in 1995 with the largest majority of the past fifteen years, he was supported by the Armed Forces and, with certain qualifications, by a good part of both the dominant and popular sectors of the country.

Those qualifications of Fujimori's popularity came to light by the end of 1996 when polls showed it to have dropped to 40% from the 70% he enjoyed six months earlier. People felt deceived by the lack of employment opportunities, the language and authoritarian style of the president, accusations of corruption against top officials, and other elements. Although Fujimori retains a high degree of popularity, this decline signals the beginning of a new phase in is leadership.

Two key elements ought to be considered: on the one hand, the substantial reduction in political violence due primarily to the weakening of the Shining Path and the Túpac Amaru Revolutionary Movement (MRTA), and on the other the relative dynamism of the economy.[9] The high growth rate of the gross national product (as high as 12% in 1994) was based on raw materials exports, construction and services without any decrease in the high rate of unemployment nor any increase in depressed wages.[10] In Peru there are more highways, health posts and schools, but there

6 As will be explained below, the emergence of Sendero Luminoso and, primarily its violent approach is also due to acute ideological dogmatism.

7 Corporate income represented 42% of the national income in 1994, while salaried workers only received 19 per cent. This distribution of the national income has remained constant since 1992 (INEI, BCR, Grupo Propuesta). Taken from the Informe Especial del Perú para el "Social Watch", 1996.

8 The modernization demanded by the world market is connected to the irreversible advance of Westernization manifest in the evolution of urban life.

9 Although it is too soon to say that both groups have disappeared, as has been revealed by recent events, notably the hostage-taking by the MRTA at the Embassy of Japan in Lima.

10 One of the strategies for raising the profile of government actions has been the construction of buildings of different types the country, thus generating some dynamism in local economies.

has not really been a reactivation of the economy in the productive sphere. This is all the more evident when one goes beyond national statistics to examine what has occurred in the country's interior.

Peru is at the beginning stages of an uneven process of modernization of state and society, manifest in the development of a commercial business class immersed in the importation of consumer goods for that small proportion of society with buying power, while 49.6% of the population lives in poverty. The supply of goods in the national market has no relation to demand, which becomes ever more depressed.

These aspects of the country's economic life only underline the definitive weight of history. The Peruvian model of accumulation has been in crisis for decades and the modalities of its insertion in the world market make any independent path to development impossible.

That said, it is remarkable that people trust in their own hard work. President Fujimori, by making constant appearances throughout the country that are all broadcast by the media, has managed to convince Peruvians that there is sufficient reason to believe in the possibility of bettering their lives. People will work at anything at all, investing as much time as is required. Youth and children invent all sorts of things to generate income. Faith in a better future, which had been lost during the years of the worst violence and economic chaos, seemed to have returned by 1995, despite the fact that there was no stable basis for it, as became evident with the downward trend in Fujimori's popularity at the end of 1996.

The growth of the informal market is demonstrating a potential heretofore unknown for creative solutions to the need for income, although without any clear long-term prospects.[11] Personal income becomes family income and that is the only way of surviving. An extensive range of informal services linked to the commercial, importing and tourism sectors of the economy has emerged, and that is a good part of the answer to how people survive amid such high indicators of poverty.

For a long time, people did not reject the president's authoritarian tendencies. Opinion polls, so common in modern politics, indicated high popularity for the top leader between 1990 and 1995. Among the people, safeguarding the independence of the Judiciary or the proper role of Congress vis a vis the Executive do not appear to be priorities. Respect for the rules of democratic politics does not seem to be a broadly felt concern.[12] In Peru a system of government based on the pragmatic search for immediate economic results is taking root for the medium and long term.

Economic, social and cultural rights are being trampled by policies of extreme liberalization. Everything can be bought and sold, even the lands of indigenous communities which until not long ago were untouchable. These peoples are being affected by the economic logic of policies which do not respect traditional cultural rights.[13] Public services have begun to be privatized, and some of these decisions have left many people without access to quality services. Regarding rights of participation, an enormous effort has been made to convince people that voting is the sum total of such rights. Because of that, the opposition lacks ways to develop, political parties have been seriously weakened, and there are no effective channels for holding the state accountable.

11 The true role of the informal sector in the nation's economy is not clear, since a significant part of formal businesses ends up marketing products in that manner, in order to sell them at accessible prices and to avoid growing tax pressures.

12 The relative fall in presidential popularity (to under 50% according to some polling firms) seems to have been accepted as part of the "cost" of imposing particular policies on state reform, and as the consequence of the undeniable stagnation of the economy.

13 As will be seen below, this situation violates ILO Convention 169, particularly since the proclamation of the new law on land tenure.

The level of political violence has been the official justification for placing restrictions on civil and political rights expressed in the innumerable regulations which establish or prolong states of emergency. And although there is no longer any solid basis for maintaining the country under military rule, given the weakness of the subversive movements, nearly 22% of the national territory is still under a state of emergency. The Armed Forces have assumed many civilian functions and they maintain an exorbitant degree of decision-making power, both formal (expressed in various laws) and informal (clearly manifest in the development of the "La Cantuta" case). The government has even passed an amnesty law for all military personnel who committed crimes against human rights during the years of internal armed conflict.[14]

Judicial reform, which seeks to diversify the ways for resolving conflicts and to reduce the suffocating logjam of cases in the courts, even when it is motivated by the healthy desire for modernization and efficiency, is limited in particularly sensitive areas. Basically, it would appear that certain parts of the justice system are off-limits to any attempt to bring that system into line with the overall thrust of liberal modernization: military justice, the allocation of jurisdiction in cases relating to human rights, and generally all cases which touch on issues considered to be of special interest to the political authorities.

Peasant communities, indigenous peoples, the displaced and all those who do not fit within the proposals for liberal modernization suffer exclusion and discrimination. The continuation of discrimination against women, however, is the result of established cultural and religious norms. Even less discussed, but no less real, is discrimination against those who have chosen to express their homosexuality openly. These facets of discrimination turn up in all aspects of human rights and daily life.

All this occurs in the midst of a severe weakening of civil society. In part this situation is due to profound institutional crises, such as the case of political parties, but it is also evident in the development of state policies which could potentially destroy the social fabric. Social policy, for example, tends to adopt the form of charity, ignoring the propository capacity of social and popular organizations.[15] Other important actors on the scene, such as non-governmental development organizations, are also restricted by their role as intermediaries between popular organizations and national and international state institutions. Even the role of local government has been diluted by a concerted central government offensive to restrict its autonomy.

In this context, international cooperation has a political role to play, in the broadest sense of the term, increasing the potential for action of certain particularly important sectors and promoting dialogue among various institutions and actors. Such possibilities are expressed with particular intensity in the following thematic areas: the defense of human rights; the modernization of the justice system; the strengthening of institutions of democratic control; and the strengthening of the role of organized civil society as an interlocutor. These four themes are developed in this paper and constitute its central thread.

1.3. Theoretical Framework

This document is a study on the prospects for democratization and human rights in Peru. What follows are the concepts and framework that orient our analysis.

14 For details, see the chapter on human rights below.

15 Such is the case of recent regulations to decentralize the management of the Glass of Milk programme, which were dictated without consultation with the grassroots organizations which were the originators and managers of that important programme.

We understand **democratization** to mean the construction of a social project, carried out jointly by a legitimately constituted state authority and an organized society, based on constitutional rules that guarantee citizen participation in decision-making and in the election of officials. More precisely, **democracy** exists when there are channels by which individual opinions, argued in freedom and equality, can be amalgamated into a certain unity by the choice of the majority. It is democratic processes which guarantee that such an approach forms the basis of the state's social praxis.[16]

Our analytical perspective on the democratization process focuses on civil society and its links to the institutionality of the state. State policies ought to be made on the basis of interaction and on-going consultation with civil society, such that the aspirations of the latter find adequate channels for expression, and at the same time public decisions are bestowed with an indispensable legitimacy. When we speak of **civil society** we refer to the terrain of voluntary associations and the organizational networks which occupy that area, including social organizations and forms of public communication by which a democratic culture and effective consensus for resolving concrete problems can be generated.

Civil society is also the space where rights originate and are exercised, and where the duties that make one a citizen are accepted. The development of social organization creates an awareness among individuals of their rights and their capacity to exercise them.

We presume that **human rights** form the basis of democratic life, that the state recognizes them as such, and they cannot be "negotiable" under any circumstances. Not even making use of legal or legitimately constitutional mechanisms is the restriction of the substantive content of human rights acceptable. The suspension of certain guarantees leaves rights intact and must be subject to strict rules regarding length, rationale and application of the measures adopted.

The human rights highlighted in this paper are codified in the international instruments ratified by Peru, including social, economic, cultural, civil and political rights.[17] Based on the rights classification framework utilized by the International Centre for Human Rights and Democratic Development, the following rights will be analyzed: rights of security, rights of well being, rights of non-discrimination, and rights of participation.[18]

These rights, as has been noted, emerge and develop in civil society, in step with the democratization of social relations. Similarly, affirming them as fundamental rights gives substance to the membership of individuals in a particular political community. In other words, it gives meaning to citizenship. Citizenship as such is achieved within the institutional structures of a political community, that is to say, under the functioning of the Rule of Law.

Over the past few years, political violence has caused a drastic deterioration in respect for human rights in Peru, especially those rights that refer to the physical security of persons. Such has been the magnitude of violations in this regard that "human rights" generically are often confused

16 DIAZ, 1984.

17 Among the principal international human rights instruments signed and ratified by Peru are the following:
- *International Covenant on Civil and Political Rights (including the First Facultative Protocol)
- *International Covenant on Economic, Social and Cultural Rights
- *American Convention on Human Rights (Pact of San Jose de Costa Rica)
- *Universal Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- *Convention 169 of the International Labour Office, referring to the rights of indigenous peoples
- *Universal Convention on the rights of the child
- *Convention on the Elimination of all Forms of Discrimination Against Women

18 The interdependence and indivisibility of these rights, a principle reaffirmed by the World Conference on Human Rights in Vienna in 1993, constitute an element to be taken into account when analysing each one of these aspects. Specifically, in Peru not placing these different rights into a hierarchy of priority is a challenge yet to be assumed by many.

with "security rights". These **rights to physical security** must be analyzed in the context of the internal armed conflict the country has suffered, taking into account the impact their violation has had on respect for all other rights.

Rights of well being will be analyzed in terms of the obstacles that exist for their promotion and development.[19] The concept of "human development" is linked to a vision which gives priority to the ultimate goal of all economic processes: the promotion of economic and social rights.

The situation of **non-discrimination rights** has to do with structural characteristics of Peruvian society and is approached in the text through an analysis of basic inequalities resulting from ethnicity, race, gender and age. In this sense priority is given to analyses related to the rights of women and ethno-cultural discrimination.

Rights of participation are analyzed through an evaluation of the development of the organizations of civil society, their capacity to produce leadership and to exert influence on the decisions of the state. The difficulties in achieving these rights in the institutional environment of the political community are analyzed through noting the obstacles to incorporating people into the category of full citizens. Similarly, these difficulties are evident when examining the incapacity of the state to legitimize its actions in the eyes of sectors of society that are excluded.

After human rights, the functioning of the **institutionality of the state** in Peru is the second central theme. On this point, the political motivation implicit in models of social management are analyzed. Particular attention is paid to the evolution of the ground rules for society contained in the Constitutions of 1979 and 1993. This study focuses on reforms to the judicial system, but also includes a brief description of the way the state functions in certain sectors.

19 This methodology was used for the study by the United Nations Special Rapporteur on Economic, Social and Culural Rights for Peru, Mr. Danilo Turk. See "The Realization of Economic, Social and Cultural Rights". United Nations Commission on Human Rights. E/CN.4/Sub.2/1992/16. 3 July 1992.

Human Rights: An Analysis of the Context Producing Violations

2.1. Security

Security rights in Peru have merited the attention of a wide spectrum of non-governmental organizations. These institutions, grouped in the National Human Rights Coordinating Body, have worked against forced disappearances, extra-judicial executions and torture, by denouncing their occurrence and providing legal defense to victims.[20] The agenda for rights of security in the country was broadened after 1992 with the approval of anti-terrorist legislation and its effects on persons unjustly accused of such crimes. Lastly, the approval and application of the amnesty law (preceded by the institutional treatment accorded the La Cantuta case) brought the subject of impunity to the centre of the work of these organizations.

2.1.1 Political Violence

The situation was critical between 1980 and 1992 when there were more than 5,000 disappearances, 600 extra-judicial executions and multiple and systematic cases of torture. It was obvious then that human rights work had to focus on the struggle against these crimes, known internationally as "crimes against humanity". The government's reaction oscillated between abdication of its authority to the Armed Forces and complicity in certain violations, involving officials at the highest level.[21]

The coup d'etat of April 5, 1992 brought about a paradoxical situation: while violations continued with the same intensity up to August of that year, as of September the number of disappearances diminished substantially (see table). The number of disappearances fell because of the promulgation of strict anti-terrorist legislation and because of strong international pressure. This does not mean that violations of human rights stopped occurring, rather that after 1992 they had different characteristics. For example, violations between the end of 1991 and 1993 can be explained by the existence of "death squads" inside the National Intelligence Service, which were set up to physically eliminate people suspected of participating in terrorist activities. The killing at Barrios Altos (November 1991) and the disappearances at La Cantuta (July 1992), among other

20 The National Human Rights Coordinating Body was founded in 1985 and is made up of 47 private organizations for human rights defence, promotion and education.

21 For example, the Prison Massacre of 1986, systematic disappearances in Ayacucho between 1983 and 1985, repeated killings in the Upper Huallaga Valley after 1986. There exists an extensive bibliography describing the situation of security rights in the country (e.g.: annual reports of the CNDDHH, reports by Amnesty International and Human Rights Watch). In this chapter, we give priority to describing recent trends in this respect.

events, responded to that perverse logic. Certain zones of the country, particularly the Upper Huallaga Valley and the jungle of Ucayali region, fall outside this analysis. In those areas open confrontation between the Armed Forces and armed rebels were the cause of continuing serious violations of the rights to life and to personal integrity.[22] Finally, the taking of over 400 hostages by the MRTA in December 1996 added a heretofore unknown element to Peru's history of violence, one which goes beyond the analysis presented here.[23]

The regime's commitment to the Armed Forces in the anti-subversive struggle can be perceived through two central events. The first was the promulgation of a series of regulations which, taken together, raised sentences for those found guilty of terrorism, removed certain crimes from regular courts and handed them over to military jurisdiction, set up "faceless" tribunals, and generally restricted the minimum guarantees of due process. This legislation, according to some analysts, allowed the Armed Forces to forego disappearances and assassinations (internationally costly to the government[24]) and to rely on imprisonment which was "living death" for the prisoners.[25] The second central event was the consolidation of impunity in the country. The failure to punish violations of human rights was codified in one of the broadest amnesty laws ever adopted in this hemisphere, one which formally impeded victims from going to court to uncover the truth.

The primary trend in security rights has been the substantial decline in political violence, which can be seen in the statistics on death due to political violence between 1991 and 1996.

Deaths Due to Political Violence in Peru (1991-1996)

Deaths	1991	1992	1993	1994	1995	1996
Murders	1309	1048	546	262	238	142
Confrontations	1781	1260	634	314	250	131
Others	93	448	134	64	23	19
Total	3183	2756	1314	640	511	292

Source: National Human Rights Coordinating Body

It appears that the Peruvian state is winning the war against the armed rebels. Despite a few outbreaks, Shining Path is no longer a destabilizing factor for the Peruvian state.[26] On the one hand, the arrest of their principal leaders, many of whom face life sentences in prison, seems to have broken the organization. On the other, the efforts of Abimael Guzmán

22 An example of this were the extra-judicial executions and tortures that occurred during an anti-subversive operation known as "Aries", in April 1994.

23 The "hostage crises", as it came to be known, ended on April 22, 1997, with a military operation that liberated the 71 remaining hostages, causing the deaths of one hostage, two soldiers and all 14 members of the MRTA. commando.

24 In 1991 the U.S. Congress vetoed some $30 million in military aid to Peru, conditioning it on an improvement in human rights, particularly in ten cases.

25 Cutbacks and conditionality on international aid, as well as the growing attention paid to this matter by the United States, Canada, and several countries of the European Union, gave an unusual "economic value" to human rights. (See De la Jara, Coll, Degregori)

26 Shining Path still maintains a presence in several areas of the country, especially in the Huallaga Valley, in several zones of the northern sierra and in the departments of Ayacucho, Huancavelica and Puno, as well as in several slum neighbourhoods of the city of Lima. The activities of the Tupac Amaru Revolutionary Movement (MRTA) has been even more restricted in the past two years, basically circumscribed to several zones of the centre of the country.

(maximum leader of the PCP-SL) to obtain a peace accord in exchange for certain concessions regarding his prison conditions caused a split with a sector of the Shining Path who preferred to continue giving priority to armed actions.[27]

Shining Path as a monolithic and centralized organization no longer exists. There are still several columns operating in areas of the interior, as well as several attempts to carry out urban work in Lima. Grassroots leaders and residents coincide in that the work of these activists is concentrated on attracting new members, without exercising the indiscriminate violence that for many years characterized their activities.[28]

Several analysts point out that even though political violence has declined substantially (principally since 1993) more recent statistics indicate that this trend has stagnated. The index of deaths over the final three months of 1995, for example, is similar to that of the final trimester of 1994 and to that projected for 1996. This could mean lower numbers than those of the previous two years will not be easily achieved. A first conclusion to draw would be that political violence will become a marginal factor in national political debate, but will continue present for several more years, with risks of outbreaks due to diverse factors.

The successes registered in the anti-subversive struggle have not been accompanied by a return to constitutional normality. A sign of this is that despite the decline in violence, up to late 1996, 42.1% of the population still lives in zones under state of emergency. In those zones, which constitute 16% of the national territory, citizen rights remain restricted and the Armed Forces retain control through Political-Military Commands.

Law number 24150, decreed by the government of Alan García, extended several of the Armed Forces' powers to areas indirectly related to the anti-subversive struggle. For example, it authorized the dismissal of civilian authorities on simple suspicion of collaboration with terrorism. In 1991 a package of laws was passed, known as "national pacification laws", which implied the total subjection of zones declared under emergency to the authority of Political-Military Officers. It even extended these powers to zones not declared to be in a state of emergency, and lastly it ceded to the Armed Forces administrative functions regarding economic and human resources, including the execution of development projects.

This legislation was partially amended by the Congress that sat at the beginning of 1992, and it appears this was one of the reasons for the coup d'etat that took place three months later. Following the coup, the powers of the Political-Military Commands were in fact expanded without the expedition of new laws.

Civil Defense Committees, armed and instigated by the security forces—and dependent upon them—are active in several parts of the country, particularly in those under a state of emergency.[29] If indeed these organizations fulfilled an important role in defence and protection of populations threatened by subversive columns, their growing "independence" from any state control is cause for concern, as is their active participation in serious violations of human rights.

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27 The Shining Path faction led by Ramírez Durand has attempted to retake the initiative by means of armed attacks on selective targets in the city of Lima, concentrating military operations in the Upper Huallaga Valley (where funds can be more easily raised) and in certain areas of Ayacucho (Vizcatán and surroundings). On the other hand, negotiations for reaching a "peace accord" between the jailed Shining Path leaders and government have been characterized by reserved treatment.

28 The assassination of grassroots leader Pascuala Rosado in March of 1996, despite its cruelty, to date does not form part of a broader campaign against grassroots leaders, on the scale of what occurred in 1992.

29 These Committees should not be confused with the original "Rondas Campesinas" of Cajamarca which, over more than twenty years, have spread to many communities to combat crime, particularly cattle rustling. These Rondas, however, were virtually prohibited when they were ordered to be incorporated into the regime established for the Civil Defense Committees, submitting them to the authority of the armed forces.

The long years of anti-subversive struggle have accentuated certain authoritarian and repressive characteristics of the security forces, including a progressive militarization of the control of domestic order. The excessive use of police force in the repression of public demonstrations is one sign of this trend.

Despite modifications recently made to the anti-terrorist legislation, elements of it still undermine guarantees to due process. Changes introduced in 1995 constitute an important advance as certain elements which severely restricted the right to defence were repealed, and the right of minors (under age 18) not to be charged with criminal offences was reestablished. At the same time, it was decreed that faceless tribunals for cases of terrorism would be dismantled as of October 1995. However, shortly before this was to be put into effect, in an evident reversal of this commitment, the Executive submitted to Congress a bill, later turned into law, which prolonged the activity of the faceless tribunals until October 1996. On that date they were then extended for another year, with the same arguments offered.

The consequences of political violence for democratic institutions will be analyzed in the third part of this study. It is worth mentioning here, however, that the weakness of citizen political participation is due, in part, to the inertia generated by the magnitude of the violence. The physical elimination of well-known grassroots leaders had a paralyzing effect on those who led communities or organizations up until a few years ago.[30]

2.1.2. Amnesty for the Guilty, Jail for the Innocent

The practice of impunity, understood as the commission of crimes regarding which no individual responsibility is determined, exists at all levels of Peruvian society. Thus, the indifferent attitude of most citizens to abuses affects the viability of democratic institutions, understood as the system of living together based on collective and individual responsibilities. The absence of any sanction for the many crimes committed by agents of the state in the context of the counterinsurgency war has been and continues to be one of the principal expressions of impunity, putting the security of the population at grave risk.

Without a doubt, the most questionable and controversial issue was the amnesty law approved in the month of June 1995 which codified impunity for the many serious crimes against human rights committed over the past fifteen years.[31] The law decreed a general amnesty *"to military, police or civilian personnel, without regard to their military or police or functional posting, who are in the process of being charged, investigated, under trial, tried or sentenced for common or military crimes in the regular courts or the military tribunals respectively, for all actions derived from or originated in or as a consequence of the struggle against terrorism and which could have been committed individually or in a group from May 1980 to the date of proclamation of this law"* (Article 1).[32]

This law not only lumps together officers tried or sentenced for clearly political reasons with those responsible for serious violations of human rights, it also is one of the broadest ever given in

30 A crude example of this took place in the populous and growing district of Villa El Salvador, where the assassination of Maria Elena Moyano in February 1992 weakened the popular movement, particularly the women's movement.

31 When it was proclaimed, the judiciary was in the midst of investigating the "Barrios Altos" case, a massacre which took place in November 1991 in the city of Lima, in which fifteen people were murdered, according to much of the evidence, by members of the intelligence service known as "Grupo Colina".

32 The law also gives amnesty to the military officers involved in the failed coup attempt of November 1992 and to those officers charged, tried or sentenced for the crimes of disloyalty and treason to the nation and the armed forces. One of the beneficiaries was General Rodolfo Robles, who sought asylum in Argentina after charging that members of the security forces were responsible for the crime of La Cantuta.

Latin America to those responsible for crimes against humanity. In contrast to other countries, this amnesty does not make exceptions and is clearly directed toward codifying impunity.[33]

The amnesty declared in Peru is unconstitutional and incompatible with the international human rights instruments to which the country is a signatory. Concretely, it contravenes the right of judicial purview which the constitution mandates should be interpreted according to the international human rights treaties ratified by Peru. That is how it was interpreted by both the prosecutor and the judge in the case of the Barrios Altos massacre.[34]

The example of Judge Antonia Saquicuray was followed by other magistrates who declared the law inapplicable to cases under their jurisdiction. In response, the government passed Law 26492 which interpreted Article 1 of the amnesty law arbitrarily, establishing that it "is obligatory for courts to apply it in their jurisdictions," thus infringing upon the independence of the Judiciary and unconstitutionally impeding judicial review.

With singular celerity, those responsible for serious human rights violations, among them the authors of the crime of La Cantuta, were freed. Other members of the security forces recovered their freedom through this law, among them the authors of the massacre of Soccos (murder of 32 peasants in 1983) and those of the massacre at Lurigancho jail (murder of 124 unarmed prisoners in 1986). Also freed was Captain Telmo Hurtado, responsible for the massacre of Accomarca (murder of 69 peasants, including 23 children). For this barbarous crime, a military court had sentenced Captain Hurtado in 1993 to six years in prison. The amnesty law also bestowed impunity on more than 2,000 cases of forced disappearance registered by the United Nations over the past fifteen years regarding which no judicial action has ever been taken.

By keeping the truth under wraps, the application of the amnesty law weakens the possibility of preventing the repetition of such abuses and thus harms the right of society and of the victims to demand reparations for damages, distorting the law's purported objective of promoting reconciliation.[35]

Another aspect of the violation of human rights, parallel to the unconstitutional amnesty law, affects the hundreds of civilians who continue to be tried by military tribunals or faceless tribunals in civilian courts, according to the arbitrary anti-terrorist legislation that violates guarantees to due process in a political context where there are no significant signs of terrorist threat.

Twenty-four per cent of Peru's prison population (5,003 people) is being tried or sentenced for crimes of terrorism or treason, crimes that were defined in 1992 by a number of executive decrees.[36] Of those imprisoned for these crimes, 15% are women. According to the same source, 24% of these prisoners are euphemistically characterized as "independent". This statistic coincides with the number considered by human rights organizations to be innocent of such crimes.

At the end of 1995 a regulation was approved to set up a Special High Level Commission to advise the President of the Republic on granting pardons to unsentenced prisoners being held for the crime of terrorism who have already served twice the time allowed plus an extension. However, pardons are only to be granted when there are indications that the accusation resulted from the fact that the prisoners had no identity documents, a strict limitation on their application.

33 In Chile, the amnesty excluded those who had been tried or found guilty and those against whom charges of rape, robbery or infanticide, among other crimes, were pending. Something similar occurred in Argentina, where legal action was dropped against those not fugitive or declared to be in rebellion and in those cases where no subpoena had been issued. But the crimes of rape and kidnapping of minors, among others, were excluded from the amnesty.

34 The judge ruled Article 1 to be inapplicable to the case and ordered the criminal trial to continue, considering that the law was unconstitutional. However, in October 1995, after the Superior Court revoked the judge's decision, the Supreme Court denied an appeal presented by relatives of the victims.

35 This was amply demonstrated by opinion polls that showed 87% of the population opposed to the law.

36 Data from Revista *Ideele*, No. 84.

So that people freed after one, two or more years of unjust detention are not jailed again, human rights organizations proposed that at the very least the tribunals be empowered by law to allow such people to be out on bail during any new trial. This proposal was finally accepted by the government after an intense campaign taken up by the Catholic Church and the National Evangelical Council, in addition to human rights groups.

Lastly, President Fujimori announced a draft law to form a new commission charged with proposing pardons to those prisoners tried or sentenced on the basis of false evidence or having simply been named by a repentant terrorist. This commission is made up of a representative of the President of the Republic, by the Minister of Justice and by the Public Defender. The Commission, set up in August 1996, led to the liberation of 110 accused. Finally, it is worth noting that, even when the pardon allows those unjustly accused to be freed from jail, it does not allow for that person to be declared innocent : legal, economic and material reparations for those persons who have lost years of their lives in prison remain to be provided for.

Recent modifications to the anti-terrorist legislation have not kept pace with the process of pacification. Faceless tribunals continue to function, and the right to defense continues to be restricted in trials for treason (aggravated terrorism) in military courts, where cases are also tried by faceless judges.

The Constitution establishes the right to reparations for cases of judicial error in criminal trials and arbitrary detentions. This right is also consecrated by the Inter-American Convention on Human Rights and the International Covenant on Civil and Political Rights for persons given fixed sentences by judicial error and for all people illegally detained or imprisoned. The United Nations Human Rights Commission also recognizes this right for cases of torture, disappearance and extra-judicial execution attributable to agents of the state.

The impunity which has held sway during 15 years of political violence in Peru has impeded the carrying out of this right for the thousands of victims of forced disappearance, extra-judicial execution and arbitrary detention, as well as for the hundreds of innocent victims of judicial errors who remain in prison. In the few cases in which recognition of this right has been achieved, its application has been neither just nor uniform, rather it has been guided by arbitrary criteria.[37]

While acknowledging that the state has invested in expanding prison infrastructure, it must be pointed out that prisoners' living conditions have not been substantially improved. Certain conceptions and policies continue to impede the reorientation of the current prison system to make it compatible with national and international norms.[38]

According to statistics of the National Institute of Prisons, in August of 1995 the country's 93 prisons held 20,752 prisoners, of whom only 4,945 had been sentenced, evidence that the Peruvian justice system suffers from a high level of procedural log-jams. This situation has given rise to disturbances within several penitentiaries and on occasion to hunger strikes by prisoners demanding quicker action on their cases. Prisoners also protest overcrowding and poor sanitation and food, and the fact that a high percentage of them have completed their sentences but were not set free. Similarly, they demand that those who have served the time established in the Code of Penal Procedures without being sentenced should be immediately released, as that code indicates.

37 The relatives of the victims of La Cantuta had to wait a long time and to overcome many obstacles to get the state to fulfil the economic reparations ordered in the ruling. The indemnization ordered by the Inter-American Inter-American Court of Human Rights in the case of Neyra Alegria and others, known as the El Fronton case, has yet to be paid. However, the state has been receiving indemnizations set in its favour in the cases of those officers sentenced and later amnestied for the "crime" of speaking out publicly.

38 All persons deprived of their liberty ought to be treated with respect given the inherent dignity of all human beings.

Regarding prison conditions, it should be noted that conditions reserved for those accused or sentenced for the crime of terrorism or treason are particularly severe: isolation in 2.5 by 3 meter cells that hold up to three prisoners. In practice, this isolation means 23 and a half hours a day in the cell and half an hour in the prison yard; only one thirty-minute visit per month by 2 members of the immediate family is allowed, and physical contact is prohibited. Minors are only allowed to visit their parents every three months. On top of this, these prisoners are denied access to television, radio and newspapers. In late 1996, an enquiry by the Ombudsman's office indicaed various infringements of fundamental rights committed in the course of application of this legislation.

2.1.3. Internal Displacement

Internal displacement in Peru, a phenomenon closely linked to the internal conflict raging since 1980, affects at least 600,000 people across the country.[39] Several sources point to the departments of Ayacucho, Apurimac, Huancavelica and Junin as major areas of expulsion.

For years, the displaced population was not organized outside of a few local attempts in Ica and Huancayo. The first important effort at organizing was the Association of the Displaced of Lima. Organized displaced people have managed to gain support from the state and from NGOs to improve their living conditions, particularly if they agree to return to their places of origin. Displacement has caused an accelerated deterioration of peasants' living conditions, above all in the South-Central Sierra. The most serious problems faced by this population are lack of identity documents, a high rate of un- and under-employment (and therefore low incomes), precarious housing, psychological imbalances, and notable social discrimination.[40]

A high proportion of the displaced population are women; according to a 1992 study, 78% of families were headed by women. Many displaced women are widows or have lost brothers, fathers and sons in the war, and any efforts to help them must recognize their social status as women by means of explicit gender policies.

The unfavourable conditions in areas that the displaced have moved to, particularly in cities, and the diminishing level of political violence since 1993, at least in its worst manifestations, have made return to their places of origin an alternative for many displaced people. For years, the displaced population was not organized outside of a few local attempts in Ica and Huancayo. The first important effort at organizing was the Association of the Displaced of Lima. Organized displaced people have managed to gain support from the state and from NGOs to improve their living conditions, particularly if they agree to return to their places of origin. The sources consulted coincide in that, despite the lack of any formal peace process, the return movement has been real and significant over the past three or four years.

Coordinated international cooperation is essential if integrated and sustained attention to this population is to be achieved. For this, local plans for municipalities and micro-regions must be drawn up on the basis of "reconstruction" development proposals led by the affected population.

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39 Although long-term trends in internal migration have led to the unprecedented demographic changes over the past 30 years, concentrating population in the capital city and depopulating vast areas of the countryside. The economic causes of such migrations become confused with those rooted in political violence, which often makes it difficult to identify those people who have migrated exclusively due to the internal armed conflict. The numbers come from a comparative analysis of studies done by non-governmental organizations in 1992. The National Human Rights Coordinating Body and the International Organization for Migration believe the 600,000 figure is conservative, because it is based on data previous to the 1993 census. The displaced population could number as high as one million.

40 Programmes for the displaced population are undertaken primarily by several non-governmental humanitarian organizations. On the basis of several local or regional studies, these NGOs have joined in a Working Group on Displacement to carry out a comprehensive study of the needs of the displaced. The individual NGOs making up the Working Group are preparing thematic studies (on mental health, civil rights, social needs) and coordinate through the Working Group to develop their lines of work.

In this regard, the visit of the Special Representative on Internally Displaced Persons of the Secretary General of the United Nations (Francis M. Deng) to Peru in August 1995 was very important. He encouraged a more open understanding of the issue, going beyond the rigid legal parameters that regulate the situation of refugees.

Peru still has no adequate legal framework for defining displaced people, and in many cases current legislation works against the insertion of displaced people in their places of residence or an adequate return to their places of origin.[41]

The government is currently encouraging the return of displaced people as part of its anti-subversive strategy, creating "pilot projects" of resettlement in zones that were convulsed by political violence and incorporating returnees into Civil Defense Committees. In other places, abandonment by the state makes any policy of return problematic. In addition, many displaced people have grown accustomed to the ways of the city and prefer to join the urban migrant community rather than to return. The situation of members of the ethnic groups of the jungle, such as the Ashaninkas, is different. In their case, return is an indispensable condition for material and cultural survival.

2.2. Well-Being

Economic, social and cultural rights are indivisible from the concept of human rights and are governed internationally by several treaties and declarations.[42] These rights in and of themselves allow for the personal development of human beings and constitute a necessary condition for the development of democratic regimes.

The international covenants to which Peru is a party oblige the state to put into practice measures to raise the standard of living of the population to appropriate levels.[43] As was affirmed by U.N. Special Rapporteur for Economic, Social and Cultural Rights in 1992, each economic and social right implies a minimum—in the areas of food, education, health, housing and labour rights—that cannot be undercut under any circumstances.

Peru's capacity to fulfil its obligations in this area is particularly limited today, given restrictions caused by internal and external conditions. Among the former, besides the key question of the distribution of wealth, there is the shrinking margin of the state's ability to reasonably provide for social needs, on the one hand, and on the other, demographic growth expressed in continuing high birth rates and in a growing and unbalanced process of urbanization.[44] The impact of military spending on budgets is relevant, especially the way in which such spending affects social policy.

41 It appears that the increase in the rate of return is influenced more by diminishing political violence than by government policy. One of Mr. Deng's conclusions was revealing: he stated that government return policies seemed to respond more to its desire to reverse migration from the countryside to the city than to the real causes of forced displacement.

42 The most important of these, the International Covenant on Economic, Social and Cultural Rights, establishes that it is the obligation of states to implement progressively by efficient measures, the rights recognized therein. At the regional level, the American Convention on Human Rights signed at San Jose, Costa Rica, seeks to integrate and consolidate civil, political, economic, social and cultural rights. While Article 26 on Economic, Social and Cultural Rights emphasizes the progressive nature of these rights, it does not establish a taxonomic list, rather it refers to the content of theCharter of the Organization of American States. The Convention was complemented by the San Salvador Protocol, which Peru ratified in 1995.

43 An appropriate interpretation of the scope of these rights brings us to conclude that their nature and the underlying principles are directly binding for states. According to broadly accepted interpretations, obligations derived from international instruments of economic and social rights are to be verified through the adoption of effective and reasonable public policies, such that the maximum possible level of well-being for humans is achieved. See Limburgh Principles and commentaries of the Committee on Economic, Social and Cultural Rights.

44 Half of the women who live in extreme poverty do not use any contraceptive method and one of every four women is ignorant of them. In this context, the government launched a broad policy to publicize family planning, which caused a confrontation with the Catholic Church and important recognition for President Fujimori during his speech to the IV World Conference on Women (Beijing 1995). Legislation has included sterilization as a part of a policy to diminish the birth rate.

External conditions interact with national trends, influencing the adoption of policies in this area. Unequal terms of trade between North and South, both in economic and technological senses, the heavy burden of the foreign debt, protectionism in the industrialized North, and conditions placed on economic policy by multi-lateral financial institutions are a few of the international variables worth considering.

The execution of stabilization programmes sponsored by international financial institutions has been successful in macro-economic terms: the inflow of capital has improved substantially in the past three years and the reduction of inflation rates and budget deficits have allowed foreign reserves to rise. In addition, privatization of state enterprises has generated significant resources.

However, the international situation that formed the framework for structural adjustment policies at the end of the 1980s was different from that which prevails today, when attempts are being made to reform the very structure of the economy and the state. The liberalizing euphoria in most of the countries of the world has waned. Northern industrial countries are insisting on erecting tariff barriers and have adopted protectionist stances which make the insertion of the region's products in world markets difficult.[45]

The economic programme underway in Peru gives priority to stabilizing macro-economic indicators, substantially reducing inflation (the rate was 11% in 1995) and reducing the budget deficit. However, runaway imports caused a deficit in the trade balance of 28% in 1994 (40% in 1995), while the lack of employment, above all in urban areas (open unemployment), and employment that is not very productive and is poorly remunerated (under-employment) remain constant problems.[46]

The stability achieved in 1991 generated sufficient confidence to attract foreign capital from large corporations. This type of investment grew by 11% in 1991, 13% in 1993 and nearly 20% by the end of 1995.[47] Although state investment only represents 20-25% of private investment, it has also increased thanks to programmes backed by the Inter-American Development Bank and the World Bank. Improvements in the highway infrastructure and irrigation projects have been given priority. In this context, privatization continues to be considered the best solution for achieving short-term results.

The essential challenges Peru faces are no longer doing away with budget deficits, reducing the size of the state or controlling inflation. Although politically costly, the measures adopted to achieve these did not require much sophistication on the part of the technical personnel who implemented them. The political will of the government was all it took. On the contrary, the structural reforms required in social programmes regarding health, education and state reform itself will require highly qualified technicians as well as a broad consensus.

Since 1990 social spending through the Ministry of the Presidency—which controls 23% of the central government budget,—has increased.[48] This Ministry controls execution of this budget,

45 Subsidies to agriculture are enormous: over $130 billion in Europe, over $70 billion in the U.S.A. and nearly $60 billion in Japan. This fact inhibits access to the markets for agricultural products from southern countries.

46 According to information contained in the two most recent census, overt unemployment stands at 7.1% in 1993.

47 Much of this has been directed toward the privatization of public enterprises and the Lima Stock Exchange. Foreign capital has been concentrated in communications, mining, energy, industry, finance and commerce. The sectors of fisheries, agriculture and tourism seem to have more links with national capital. (CEPES-DESCO 1996)

48 The definition of social spending is very broad, including all spending under the judiciary and the ministries of Labour, Education (including higher education) and Health. Also included are special programmes for poverty alleviation. In the 1995 budget, 70% of spending on poverty alleviation went to payroll and creation of infrastructure.

including that which used to be channelled through the Ministries of Health and Education. In the 1996 budget, social spending represented 37.7% of total public spending, including payroll and infrastructure, while spending on the foreign debt took 48.3% of the budget.[49]

Poverty, accelerated by drastic adjustment policies, continues to be a substantial problem, even though there has been a slight reduction recently. Forty-nine per cent of all Peruvians are poor, a much higher percentage than ten years ago.[50] According to a study published by the National Institute of Statistics and Information (INEI), 84% of able-bodied Peruvians have no work or are under-employed.[51]

At the beginning of his second term, President Fujimori announced that his government would reduce poverty by 50% by the year 2,000. The 1995 budget set aside 7.8% of GDP for social spending ($4.56 billion). One aspect of the government's anti-poverty strategy is the creation of employment programmes for the poor in urban and rural areas so that they can rebuild local infrastructure.

Despite these good intentions, the Letter of Understanding recently negotiated with the International Monetary Fund, which was not the subject of national debate, contemplates a 25% cut in social spending, primarily in the National Housing Fund (FONAVI) and the National Compensation and Social Development Fund (FONCODES), with the express purpose of "cooling off" the economy and reducing the trade deficit.

Two examples of the state of economic, social and cultural rights in Peru will be examined in the following sections: the right to education and the right to health.

2.2.1. Right to Education

Recent decades have produced an expansion of the Peruvian educational system for men and women. Illiteracy was reduced from 58% in 1940 to 13% in 1993. Between 1966 and 1985 enrolment in free public schools grew from 19% to 72%, but over the same period investment in education fell from 30% of the national budget to 13%, and has continued to decline since then. The increase in enrolment was not able to compensate for such problems as less funding of public schools, low educational standards, important inequalities regarding access and the downgrading of teachers' professional training.[52]

National figures hide the disadvantages faced in rural areas, where children attend school for fewer years and the possibility of pursuing higher education is minimal. Poverty, child labour, cultural characteristics and the low educational level of mothers are elements that condition the potential for improving education in Peru. In addition, areas that were affected by the internal war have experienced a significant decrease in enrolment since many schools stopped functioning. Currently, there are newly built schools that have no teachers.

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49 Special Report on Peru for the Social Watch

50 See "Perú en números", (*Revista Cuanto* 1995). There are over 5 1/2 million women in Peru between the ages of 15 and 45. According to a survey measuring standard of living (ENNIV, 1994), 45% of them are living under the poverty line.

51 Of every 100 able-bodied Peruvians, 73 are under-employed, 11 are completely unemployed, and only 16 have adequate employment. According to statistics provided by INEI, youth are the most affected by high unemployment with over 70% of 25 to 34 year-olds unemployed. The unemployment rate in Lima is 38.3 per cent, but it is much worse in other cities such as Apurímac (75.9%), Cusco (73.9%) and Huancavelica (73.6%).

52 An overview of the situation in education was given in Boletín No. 12 of *Argumentos* published by the Instituto de Estudios Peruanos: a. poor quality education; b. high drop-out rates; c. decrease in teachers' real income; d. contradictions among the various processes of educational reform; e. investment in education that gives priority to infrastructure and capital goods, to the detriment of the development of human resources; f. Systematic deterioration of the working conditions of teachers; g. students who are malnourished.

In the mountains and the Amazon region, students repeat years three times as often as in Lima. The conditions in which these children study are incredibly poor. Most schools do not have running water or sanitation or electricity. The rate of child malnourishment reaches 62%. And bilingual education is practically non-existent. The curriculum applied nationally was drawn up for Spanish speakers and is not appropriate for those whose first language is Quechua or another indigenous language. The low quality of education also has to do with the deterioration of teacher training. Half of Peru's teachers have no degree, many come from non-university institutions or from schools of education which do not have the minimum conditions to prepare people properly for a teaching career.

Three laws decreed at the end of 1992 constitute the government's proposal for educational reform. These have yet to be put into force and they contradict previous legislation. The underlying idea is to improve educational quality through making use of the educational market. This means that schools ought to be "autonomous" to compete. The fundamental factor in improving quality will be that parents will be able to select the school of their preference, the one that offers the best opportunities. Naturally, parents who have fewer economic means will get poorer schools.

Regarding changes in the financing of education, the principal idea is that the current system of public financing is injurious and ought to be eliminated and replaced by a system of monthly subsidies per student. The right to these subsidies will be devolve to each student so he or she can become a consumer free to choose his or her school. This proposal thus implies the transfer of public schools to the private sector. It approaches "decentralization" as the transfer of public schools to private promoters and changes the role of the state. The Constitution of 1993 provides a framework for national education by posing restrictions on access to free higher education (Article 17) and the elimination of the state's obligation to spend no less than 20% of the total budget on education.

Analyzing the situation of women and education, it is evident that higher enrolment among women is closely linked to the fact that schooling is free, to literacy programmes and to adult education, all of which were created in recent decades. Any possibility of improving education for women implies improving the quality of all education, but it will also require overcoming barriers of gender discrimination.

Within the heterogeneity of Peruvian society, certain specific aspects of women's educational life are significant. In the 1990s Peruvian women had an average of seven years of schooling. In the city this reached 8.5 years, while in the countryside it was only three years (not even finishing primary school). Today there are 1,370,000 women who have never gone to school, of whom 287,000 are between 5 and 19 years of age. In the interior of the country, the highest concentration of women excluded from the educational system are located in areas where people's first language is an indigenous one.

Everything seems to indicate that to understand the educational situation of women it is essential to examine their daily lives in every cultural and social context. Girls in rural areas have no opportunty to satisfy educational needs because their expectations are frustrated by their roles as workers and mothers.[53] In reality, by the time they are twenty women's educational possibilities have already been defined according to the levels of their responsibility in the home and according to whether they have children.[54] Higher education has not allowed women to break the salary differential in relation to men, nor to escape from traditionally female careers with lower earning potential.

53 Forty per cent of young rural illiterates are mothers.

54 Montero 1995.

The reduction of state spending that affected education so drastically and the constant rotation of ministers (eight in six years) have also been negative factors in the development of consistent policies. It is hoped that the Plan for Improvement of the Quality of Education recently released will be complemented by urgent curricular reform and a plan for professional development for teachers.

2.2.2. Right to Health

A useful indicator for measuring progress in the promotion of economic, social and cultural rights is access to basic public services of sanitation, health care and potable water. Seventy-one percent of Peru's population has access to potable water, and 57% to adequate sanitation, but the numbers fall considerably 25% in rural areas.[55]

In the decade of the 1970s the public health situation was already worrisome, since the population did not have access to minimum services: the utter lack of programmes for prevention and protection of health was a sign that the limited services in existence were oriented toward curative medicine. This system fell into crisis with the enormous number of epidemics that attacked Peru in recent years: cholera; preventable diseases like measles, polio, whooping cough; so-called metagenic diseases like dengue and malaria; meningitis, tetanus, yellow fever, asymptomatic typhus, diphtheria, rabies, and of course AIDS.

In 1996 health care did not cover the minimum needs of the population. Although access to potable water has increased and this has had repercussions for the prevention of gastrointestinal disease, 40% of the population is still affected by respiratory or intestinal infections or by tuberculosis, all of which can cause death.[56]

The risk of dying in the first year of life is twice as great in rural areas as in the city. Infant mortality in the city of Callao is 21 per thousand, while in Cusco, Puno or Huancavelica it is as high as 82 to 96 per thousand.[57] Even so, infant mortality has fallen thanks to the falling birthrate, increases in women's education, the activities of women's organizations, mass communications, and migration to urban centres.

Some 10,000 children under five years of age died in 1994 from pneumonia, according to sources in the Ministry of Public Health. The largest number of cases were registered in poor neighbourhoods of Lima and high-altitude areas in the departments of Cusco and Puno. High mortality from pneumonia in these sectors is due to the fact that the disease will quickly do in children who are malnourished, were born under-weight, or were not vaccinated on time.

The rate of maternal mortality in 1991 was 261 per 100,000 live births. Estimations have it that 15% of maternal deaths correspond to pregnant adolescents, who also suffer 20% of deaths due to abortions. It is also estimated that 65% of pregnant women who receive pre-natal care are never given anti-tetanus vaccinations.[58]

The decrease in state investment in health and the privatization of health services have had a high social cost. Although the state retains responsibility, it is estimated that 25% of the population which ought to be served by the Ministry of Health is not covered by any health care service.[59]

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55 UNICEF "Estado Mundial de la Infancia", 1996.

56 In Lima, which has 29.4% of the country's population, 43.1% of the cases of tuberculosis were recorded.

57 The causes of death for children below the age of five between 1990 and 1991 were: respiratory infections (30.7%), diseases associated with the post-natal period (24%), diarrhoeic diseases (14.2%), severe malnutrition (6.4%) and preventable diseases (1.6%).

58 Special Report on Peru for the "Social Watch" 1996.

59 The greatest coverage in health is provided by the Ministry of Health (66.8%); next comes non-public services (15.6%), then the Peruvian Social Security Institute (11.6%) and the Armed Forces (6%).

The budget of the health sector has fallen from 1991 to 1994 and that has had repercussions both in hospital capacity and in preventative campaigns. In 1995 the budget was doubled and already the results are evident, although there is the risk of a new cutback given pressures from international financial institutions to reduce public spending.

Despite these steps forward and back, national indicators have improved regarding infant mortality, birth-rate and life expectancy.[60] It must be noted that women's organizations have taken up tasks of improving family health, especially that of children, with creativity and dedication. They have backed up state and private (NGO) preventative campaigns with unpaid volunteer labour.

Also relevant is the concentration of doctors in Lima. A 1996 CIPES-DESCO report notes that in 1992, 52% of all doctors lived in Lima. This means that significant regions of the national territory do not have health professionals. The lack of policies to encourage a more rational distribution of doctors affects the right to health of the poorest population.

2.3. Non-Discrimination

Discrimination toward various elements of society is an on-going practice in the political, economic, social and cultural life of Peru. Although discrimination arises from many aspects of relations among individual Peruvians, we wish to give priority to describing discrimination by gender, by ethnicity and culture, against youth, and against indigenous peoples.

Ethnic and cultural discrimination and that due to sex or gender make up a complex inter-related system which acts to withhold rights from those who are affected or to block their avenues of protest. Legislative changes have little effect on this reality because they do not form part of broader policy initiatives. Each of the forms of discrimination mentioned holds different weight according to the context in which it occurs. Any understanding of the phenomenon of a particular discrimination must be related to an understanding of a particular historical moment.

The exacerbation of social differentiation is connected to the structural exclusion of important sectors of the population, evident in the sharply unequal distribution of income in Peru. On top of this, political violence has weakened the social fabric woven with such exuberance in the decade of the 1970s, making discrimination that much more notorious. Or perhaps it is that there is greater awareness of discrimination today.

Middle- and upper-class urban professionals, most of them men, monopolized management positions and representative roles during much of the history of the Peruvian republic, while the Andean majority has been relegated to the exclusive role of being represented. This situation changed during the Velasco period when the state structure opened up to citizens from a broad spectrum of social backgrounds. Currently, it could be said that the government of President Fujimori has given more weight to professional training than to social background.[61] Inequality in the distribution of wealth had a positive correlation with formal democratization over the past forty years, without ever eliminating the tendency of the representative system to exclude people.

From the point of view of a gender analysis, if indeed women today have a more visible presence in the public sphere in relation to previous generations, positions higher up in the hierarchy are still overwhelmingly held by men. In electoral politics there are no significant

60 It must be kept in mind that national indicators mask the differences between Lima and the rest of the country.

61 It is still the case, however, that traditional power groups continue to hold a determinant influence over public decision-making.

variations from this norm regarding the number of women candidates or women elected to representative positions (parliament, regional government, local government).[62]

Economic inequality was accompanied by formal democratization in the past 40 years, but without eliminating the tendencies towards exclusion of the majority in the representative system.

From the standpoint of gender analysis, even though women today are much more present than in previous generations in the public sphere, the responsabilities and positions in the upper echelons are overwhelmingly held by men. In electoral processes the number of women candidates and elected representatives (be it in parliament, regional or local government) has changed little.

Quantitative measurements of women's access to political power do not give a true picture of the potential for conceptualizing policies from the basis of the multiple determinants of individual identity unless they are related to the content of women's participation. The same phenomenon can be observed regarding the access of young people to representative bodies.

The situation of inequality between men and women, expressed in quantitative terms, cannot be explained only by the absence of mechanisms for promoting equality. There is also the fact that women's voices and actions are undervalued in traditional political circles. Political exclusion of things "female" also occurs with things "indigenous" (when compared to Western ways) or with things "different" (when referring to out-of-the-closet homosexuals). It could be said that to reach the inner circles of power one must "become normal," according to the rules of social acceptability imposed by the dominant culture. A woman must present herself as "an executive," dedicated to her work, and if she is a wife and mother she must also present herself in that role publicly.[63] Any slip-up in family or emotional affairs could cause a downfall in her political career. One of the keys for analyzing the system of gender and politics is the manner in which the family interacts with the political world.

2.3.1. Worsening of Ethnic Discrimination

Between 1989 and 1992 human rights groups were caught up in dealing with the fallout from political violence and did not show much interest in defending causes linked to racism, gender discrimination or discrimination against young people because these did not seem as "urgent". Only recently has there been an opening to new human rights causes and an effort to link up with groups that work from different viewpoints on the defense of such rights. The integrated and indivisible conceptualization of human rights affirmed at the 1993 World Conference on Human Rights has yet to be incorporated into the day-to-day work of Peru's human rights groups. Over the past fifteen years, sensibility to the diverse manifestations of discrimination has been expressed almost exclusively by those whose politics is derived from their own personal condition. In this context, even less could be expected from the state.

The internal war in Peru since 1980 has exacerbated racist sentiment, while repressive policies have tended to be explicitly contrary to the interests of those who do not fit within the dominant Western norms.[64] The origin of the Shining Path in the Andean part of the country, on the one

62 In 1994 there were four women vice-ministers. In departments requiring a high degree of technical training, such as the Superintendency of Taxation Administration, nearly 40% of the executives and 45% of the professionals were women. In the judiciary women hold office low down in the hierarchy. Since 1993 in local provincial government only nine out of 183 mayors are women (4.9%). According to UNICEF (1996), the percentage of women parliamentarians in Peru is 10%, lower than the average for Latin America as a whole (12%).

63 See the interesting analysis presented by Eliana Villar in "Por mérito propio" (1994) of women's role in current politics where she proposes that the "exceptionality of political women is actually an implicit recognition of discrimination."

64 See Calligros, 1993.

hand, and the high incidence of persons with indigenous features detained as Shining Path members, on the other, have caused such persons to be stigmatized by political and military institutions. There is much greater possibility that "cholos", with dark skin and indigenous features, will be captured and tortured. They are considered to be powerless people, "potentially dangerous"[65]. These same denigrations occur with women, above all if they are young and look "cholo". The Human Rights Watch - Americas report on women in the war demonstrates how sexism is expressed in the midst of these conflicts.[66]

In Peru the United Nations Convention Against Racial Discrimination is in force, yet no concrete measures have been taken to counter human rights violations resulting from the subordination of Andean and Amazonian cultures to Western culture. Observing the educational system, one could conclude that cultural rights are consistently violated. Only 3% of the non-Spanish-speaking monolingual student population receives bilingual education. This means that a "violent imposition of Spanish" is enforced which threatens the emotional and cognitive balance of Andean students.[67] The same thing happens in areas of the jungle where there are 63 indigenous groups, many of which are dispersed and risk disappearing as a result of the state's offensive, the effects of the internal war and economic activities that harm the ecological balance of the area.[68]

Ever since the 1970s, ethnicity has been considered to be an element of identity (self-affirmation), at least at the level of discourse, so it is no longer strange for someone to identify him- or herself as a mestizo and to recognize that Peru is a multi-racial and multi-cultural country. This is even stated in the Constitution, in Articles 2, 15, 16 and 17. But at the same time, ethnicity is one factor of inequality.

The daily experience of ethnic discrimination must be understood in the context of the particular characteristics of Peruvian society. It is not simply a question of condemning extreme cases, because ethnic discrimination is contained in a web of imperceptible daily events to which we are quite accustomed but which in reality undermine the developmental potential of those discriminated against.

2.3.2. Discrimination Against Youth

NGOs that work on children's issues have worked hard to improve the situation of children in Peru. The problems faced by adolescents, such as drug addiction, have not been addressed beyond general attention to social problems. Studies on young people's identity as social actors are beginning to be published.[69]

The International Convention on the Rights of the Child opened the doors to the potential for action and, as in the case of women, enumerated the responsibilities of the state and of civil society regarding children's living conditions.

In Peru a Legal Code Governing Children and Adolescents was approved in 1992 and has been in force since 1993. This code replaced the 1962 Legal Code Governing Minors and represented a significant advance, since it recognizes that minors are also holders of rights. Its major aspects are: children's right of association; the need for special policies for child and adolescent victims of armed

65 "Cholos" are the racial and social product of mestizaje, the indigenous people who have migrated to the cities.

66 See Human Rights Watch - Americas, 1993.

67 See *Debates en Sociología* No. 17, 1992.

68 The National Human Rights Coordinating Body maintains that the Ashaninka people require special governmental support since they were seriously harmed by the dynamics of the internal war. (See CNDDHH, 1995.)

69 See Tanaka, 1994.

violence, for working children and for street children; and the creation of legal defense offices to function in municipalities and public and private institutions. In addition, it creates a special innovative judicial system for dealing with children and adolescents.

Certainly, since it is a recent addition, its effects will have to be evaluated at a later point. What does seem evident is that the Constitution of 1993 is more restrictive than the mandates of the International Convention: it only guarantees protection to children and adolescents who have been abandoned.

Despite the National Action Plan for Childhood, underway since 1992, the state has shown no great explicit concern for broadening the social and political participation of children and adolescents of both sexes, as an aspect of democracy. Recognizing the differences between girls and boys is essential if policies are to be designed to help girls overcome the subordination they experience from an early age. Illiteracy is higher among girls (65% of illiterate adolescents are female), although malnutrition is higher among boys (52%)[70]. Social indicators comparing boys and girls demonstrate a discriminatory tendency in the patterns of socialization. The segregation of girls in hidden domestic work is a disadvantageous starting point in society.[71]

2.3.3. Gender Discrimination

Discrimination that affects women, in terms of distinctions, exclusions or restrictions, can open up a window on other forms of social exclusion. In reality, discrimination never occurs in a single pure modality, and some social experiences concentrate all discriminations at the same time.[72] In such feudal leftovers that still persist in Peru, all facets of discrimination converge. Similarly disadvantageous conditions are faced by those who have chosen to openly embrace their homosexuality, in that all facets of discrimination are focused at once.[73]

The condition of women in Peru today is marked by several processes: the intensification of the feminization of poverty[74]; reactivation of mechanisms of exclusion in education; and disproportionate workload due to state cutbacks in social services, especially regarding family health and the survival of children.[75] Women heads of families (probably underestimated in official statistics) suffer the process of pauperization more sharply, even those who are middle-class, because there is no state assistance for them.[76]

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70 This could be explained by the fact that girls are closer to food production, fulfilling tasks of the "little mother", while boys spend more time in the street seeking income.

71 See Anderson, 1993.

72 Migrant domestic workers (minors, indigenous, poor and abandoned) are a good illustration of how much a human being can suffer "total oppression" without provoking much of a reaction. See Portocarrero, 1993.

73 In our interview with Oscar Ugarteche, a member of the Homosexual Movement of Lima (MHOL), he referred to the multi-dimensionality of discrimination against people who dare to show their homosexuality openly. Discrimination against people due to their sexual choice ought to be understood as a discrimination due to sex/gender. Within the framework of human rights, this sort of discrimination restricts the potential for development of those people who embrace a different norm regarding their sexuality. It doesn't matter that the number of people who suffer such discrimination is limited. Discrimination due to sexual choice stigmatizes and isolates at all levels of Peruvian society. There are only a few small social circles where such people can live and work without being attacked. In recent years such discrimination has become more visible thanks to the work of the Homosexual Movement of Lima, an NGO that has openly taken on the task of speaking out on homosexual policy issues in a political context.

74 The 1994 NGO Report on the occasion of the IV World Conference on Women enumerates aspects of the feminization of poverty, including women's precarious access to the labour market, with a strong predominance of underemployment under exploitative conditions without benefits in both the formal and informal sectors of the economy; feminization of the workforce on minifundios; inhuman working conditions for displaced women; super-exploitative conditions in the informal, commercial, micro-entrepreneurial labour market; increase in unpaid family labour.

75 If infant mortality in Peru was reduced or kept from rising in a correspondent proportion to socio-economic deterioration and the reduction in social spending, this feat was achieved thanks to the capacity and resources of women, by increasing the extension and intensity of their work.

76 Women head 24.7% of urban households and 20.1% of those in the Andean countryside. According to World Bank technical studies, households headed by women do not seem to have lower consumption levels as a result of the crisis, despite the fact that they are poorer than those headed by men. What this sort of study does not reveal is that women heads of households increase their workload to take care of the family's needs and this is one factor that moderates the consequences of the economic crisis.

The unconditional signing and ratification of international treaties, as with the case of the Convention for the Elimination of All Forms of Discrimination Against Women, is no guarantee that domestic laws will be brought into line with the imperatives of international instruments. Only when there is organized pressure are significant advances achieved. And although laws by themselves do not transform reality, they do contain an important symbolic value. At the judicial level however, there are worrisome signs that the advances will be limited.

The basis of equality presumed by Peruvian law ever since the Constitution of 1979 was formal, but no less important because of that. The recognition of "common-law marriages", the equality of rights for children independent of the marital status of their parents, among other changes, were significant. The Civil Code of 1984 modified the relations between spouses by eliminating the man's exclusive parental authority and placing mother and father on an equal footing regarding the children. Another modification which was quite polemic was the withdrawal of certain rights from married women, in the name of the principle of equality. But in formal terms, civil legislation put an end to the archaic parameters of masculine authoritarianism, at least as far as the law was concerned.

A significant legislative setback occurred with the Constitution of 1993, when it eliminated one concrete aspect of the principle of equality: the possibility of conceding women "no fewer rights than men." This mandate was one of several ways of introducing into the national law the potential for adopting temporary measures to accelerate de facto equality between men and women.[77] The Constitution of 1993 also included within the section on protection for the right to life, that "the fetus enjoys all rights in its favour," thus blocking the possibility of decriminalizing abortion with the woman's consent. Neither does the text of the Constitution contain the right to equal pay for equal work, which had been included in the previous Constitution.

Civil matrimony, an important social reference point, is not a defining factor for the lives of women in the broad sectors of urban and rural poor who maintain affective relations independent of marital status. In this sense, family structures headed by women are still not recognized. They are considered "incomplete families," the antithesis of what families ought to be.

None of the principal laws (constitution and civil and penal codes) recognizes mothers as the primary social reference point regarding family organization. The legislation does contain basic instruments for equality of rights regarding separation, divorce, inheritance, food support, among others, but in practice women encounter enormous difficulties in exercising them.

Regarding penal law, the state's indifference to the discriminatory conditions suffered by women is notorious. There is no adequate protection against domestic violence and the crime of battery, which would be the one applicable, has the significant limitation that it only applies to physical violence, leaving the psychological and sexual violence that are so common in such conflicts totally aside.[78] It is accepted since 1991 that rape can occur between spouses and against both women and men, however the prevailing repressive climate inhibits victims from pressing charges. A partial step forward occurred in 1996, when the congress approved a law eliminating the exemption from criminal responsibility of the accomplices in cases where a rapist subsequently married the victim. Later, the exemption for the rapist was also eliminated.

77 The Convention on the Elimination of All Forms of Discrimination Against Women, in Article 4, incorporates so-called "positive discrimination" as a means for progressively transforming existing inequalities.

78 According to the Penal Code, an injury is light if less than ten days are missed from work, and serious if more than ten days. In addition, proof in these cases is very difficult to obtain, given among other reasons the extremely deficient system of legal medicine.

What's more, abortion on demand continues to be a crime and, despite a broad campaign in favour of decriminalizing abortion in cases of rape, penalties remain in force for women who abort after being raped or who interrupt their pregnancy due to a fetal deformation. This criminal legislation affects women's individual liberty and continues to be an element of control of women's sexuality. It is well known that the crime of abortion is practically never prosecuted, but even so a clandestine network of abortion practitioners does operate with the collusion of corrupt elements of the police, putting women's health and lives at risk, above all of those who do not have economic resources.[79]

The disadvantageous way in which women have been incorporated into Peru's labour market today is a fundamental issue, because restrictions on income have been so drastic in recent years that women have come to accept the worst working conditions. The Job-Creation Law (D.L.728) affirms the need for equality of opportunity in working conditions, but unfortunately: "The absence of affirmative measures, and more importantly, of legal and institutional measures to make job creation for women possible in the short and medium term, along with the existence of obsolete legislation, resistance to deal with the issue of women workers and workers with family responsibilities, with all its implications regarding rights and responsibilities—like the persistence among legislators and politicians to view women and their issues as a humanitarian and social matter—are facts that diverge substantially from the egalitarian discourse of the government in power, just as occurred with the previous ones."[80]

Although this law recognizes "women with family responsibilities no matter their age" as beneficiaries of special employment programmes (which in reality do not exist), it would have been more important to eliminate the obstacles which keep women with family responsibilities from taking jobs. There is no reference to day-care centres or analogous facilities.

Statistics by age group confirm that women participate in the labour market at an earlier age than men, with the highest percentages in the 20 to 30-year-old group. Considering that this is the group which includes most married women or women with small children, we can conclude that the majority of women who work are in dire need of leaves for pregnancy and breastfeeding, as well as of day-care centres for infants and toddlers.

Protective labour legislation related to women—prohibition of night work, dangerous work and work which is carried out on public roadways—ought to be revised in light of the Convention on the Elimination of All Forms of Discrimination Against Women, and should be brought into line with recent decisions of the International Labour Organization. It makes no sense to continue describing how work regulations regarding women are overprotective when no viable concrete alternatives are sought.

In Peru these issues are dealt with in ways that are contrary to international protective law: the right to breaks for breastfeeding has been changed, and a woman who has been laid off can no longer demand a severance of two months pay, additional wages if she was pregnant at the time of her firing.

The Peruvian state has not signed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which dates from 1949. However, Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women obliges the state "to take appropriate measures in order to suppress prostitution and trade in women."

79 The recent approval of a law which authorizes sterilizations indeed gives men and women the capacity to make reproductive decisions, but unless strong efforts are made to inform people of their rights it could become a policy of compulsive sterilization, violating the right to free choice, especially when it is applied in regions where women are barely literate and where information is more difficult to obtain. (Interview with Nancy Palomino.)

80 Ore 1993.

Since 1983 municipalities have the right to regulate prostitution. The Special Licensing Regulations allow for the functioning of brothels and the Division of Special Licensing of the National Police control them. On the basis of this legislation, municipal governments earn revenue from this sort of establishment and the control exercised by the police generally means the persecution of those prostitutes who individually or in an organized fashion work outside them.

Practically nothing is said of the human rights of the people who live from prostitution, and although the Penal Code does not define prostitution as a crime (only procuring), in practice prostitutes are persecuted more than pimps. There is no clear awareness that the rights of women should be respected even when they are prostitutes. Moralistic judgements still deprive of adequate protection those who work in the sex trade, be they women or men of any age.

Another form of discrimination which seriously affect women is the worsening of violence against women in all its modalities.[81] Although the 1993 law on intra-family violence is not the most progressive text, it constitutes an important basis for the protection of women who face situations of violence in their family relationships.[82] It recognizes as domestic violence: physical and psychological mistreatment among spouses, cohabitants or persons who have had children together although they do not live together, as well as by parents or guardians against minors under their responsibility.

The domestic violence law also shows that legal measures can be neutralized to a great degree by the administrative and judicial system itself. Lawyers who specialize in cases of violence against women point out that one problem in enforcing the law is that judges do not dare dictate the necessary precautionary measures to protect the woman because these are not specified in the law.[83] It would seem that there is a certain judicial passivity in this area, also found among prosecutors, which subverts the intentions of the law and the civil procedure, both of which require judges who "direct the trial" rather than simply repeat what the law says literally.

The existence of the Metropolitan Lima Women's Police Station since 1988 has been a positive step forward in making violence against women visible. This police unit has turned out to be truly important for receiving women's many complaints, as well as being a notable symbol. Another favourable sign is that women's groups in other regions of the country have begun to demand the establishment of women's police stations in their respective localities.[84] The simple fact that such places exist contributes to making violence visible as a serious social problem. The presence and labour of several NGOs specialized in the defense of women's rights has added significantly to the impact of this experience.

The members of the National Police in charge of such cases become sensitized through their close contact with women's lives and come to recognize the need for special treatment in situations of violence, in any of its forms. And although much is still to be done to incorporate the experience of the women's police stations into a general policy for promoting rights, the strengthening of such institutions will likely help improve judicial treatment of crimes that harm the dignity of women.

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81 Among these modalities are: family violence throughout women's child-bearing life; sexual violence: rape, trafficking, the sex industry, denigration; violence against women in the internal armed conflict (displaced, detained, tortured, murdered); social and interpersonal violence due to homosexual orientation; coercion regarding reproductive decisions, exposure to high-risk clandestine abortions, negligence and poor treatment in health care.

82 Law #26260, known as the Law on the Policy of State and Society on Intra-Family Violence. The approval of this law, even though it has no general vision of violence against women as a manifestation of discrimination, was the result of the link established among women parliamentarians (later members of the Constituent Assembly) who maintained a dialogue with women's groups on the potential scope of that law.

83 Interview with Silvia Loli and Grecia Rojas, lawyers with the "Flora Tristán" Peruvian Women's Centre.

84 To counter domestic violence, one of the state's institutional means are the women's units of the National Police, set up in eleven provinces of the country between 1992 and 1994. All provide legal, psychological and social support services, working in conjunction with local feminist NGOs. See Blondet and Montero 1994: 89.

Peru ratified the Inter-American Convention for the Prevention, Sanction and Elimination of Violence Against Women in March 1996 and, since that instrument sets out an appropriate approach to violence, its implementation should allow for significant improvements for the female population affected by physical, psychological and sexual violence in its diverse expressions.

Regarding Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Peruvian state has not taken any appropriate action whatsoever to modify the social and cultural norms that stereotype men's and women's roles. Few significant changes have taken place in national school curricula and access to the mass media for promoting women's positive contributions to society is inadequate. People's attitudes are changing, but only as concerns their role as consumers.

A certain pragmatism born of the need to survive has blocked the development of critical viewpoints. Audio-visual advertisement, the content of news programmes (especially television), soap operas, entertainment series all lead to banality and the reinforcement of the most traditional of feminine and masculine roles. This is fundamental because it is not possible to achieve substantial changes regarding discrimination without firm state policies to develop short, medium and long-term programmes in relation to the mass media.

2.4. Participation

Rights of participation face serious challenges in Peru today. On the one hand, the capacity of civil society organizations to take leadership and influence state policy has been weakened. On the other, the political system itself has become an obstacle to the population's attaining the rights of full citizens. We shall address issues of participation in two aspects: civil society, and the particular situation of indigenous peoples.

2.4.1. Civil Society

In Peru at the end of the 1980s and the beginning of the 1990s, three phenomena that had an enormous impact on people's lives converged: the economic catastrophe of the government of Alan García (with its legacy of hyperinflation and recession), political violence, and the discrediting of political parties. These phenomena seriously weakened social organizations that made demands on the political system, and only those based on helping their members survive remained active. Many of the latter became local voices for neighbourhood or municipal social movements. Other religious, cultural or charity organizations, be they working-class, middle-class or upper-class, remained active but dispersed and were unable to give voice to broader interests. Such religious organizations and youth movements linked to churches, migrants associations, sports clubs, and women's, neighbours' and youth organizations all have an enormous potential to strengthen democracy and enforce respect for human rights.

In the 1970s, many of these organizations gave rise to social movements at a time when the state's attitude toward social mobilization was changing—between 1968 and 1975 as many unions were given recognition as between 1936 and 1968. This allowed vast sectors of the Andean peasantry and above all young workers recently arrived in the large cities to exercise their civil rights for the first time. This happened through experience in different social organizations, be they workplace or neighbourhood-based, often recognized and even encouraged by the state. After the government of General Velasco fell, these social organizations reaffirmed their autonomy and confronted the power of the state directly. This was the case not only of unions and neighbourhood organizations, but also of political parties, professional associations, and regional, student and ethno-cultural groups.

The activities of such organizations, based on economic demands, constituted a response to worsening economic conditions and did not as a rule seek to further the democratization of Peruvian society.

For some, the weakening of popular organizations signals a disintegration of the social activism of the poor, hand-in-hand with the neoliberal opening of the Peruvian economy promoted by the current government. However, activism has not disappeared. In some cases "survival" organizations, be they soup kitchens or committees of displaced people, seek to become economic organizations for production or marketing. The challenge is enormous since they must compete in the market, but they have had successes, such as the Andean migrants squatting in the industrial zones of Gamarra (Lima), Trujillo and other cities who have achieved a collective (broad family networks) transition from being destitute to being small or middle-sized producers.

The once-powerful labour movement faces similar difficulties, now that unemployment and the threat of layoffs has made workers more individualistic, leaving little room for union organizing. Working conditions and labour rights have been progressively transformed in recent years and the restriction of such rights has occurred in the midst of inaction on the part of unionized sectors. Unions are in an extremely weak position to influence general policy decisions, and are limited to defending rights that are increasingly threatened. The unionization rate in Peru is one of the lowest on the continent and the informal sector does not have institutionalized channels for resolving conflicts of interest.[85]

It is evident that unions play an ever more marginal role, but we should not underestimate efforts to give a new content to the labour movement. Currently, as we were told by José Risco, Secretary General of the Federation of Civilian Construction Workers, the new union leadership is seeking to turn their organizations into valid interlocutors for reaching "accords" with business and the state to allow for companies "to be saved". In today's unions there is a lot of talk about co-management, negotiation, dialogue and contributing to the growth of the company, which would have a direct impact on the benefits and well-being of the workers.

Women's organizations have had a slightly different history. On the one hand, traditional paradigms have been seriously questioned by middle-class women and the parameters that governed previous generations have been broken. An important group of women professionals emerged from that process, many of them critical of participation in leftist groups and willing to share their critique of the destiny of women with women from other social sectors. Access to birth control and the decrease in the birth rate which resulted also created opportunities for freedom and women stepped into the world of work and politics.[86] At the same time, the economic crisis and urgent needs pushed poor women to discover, in their inter-action with women from other social strata, that their collective experiences in the Glass of Milk Programme or the Community Kitchens were not only contributing in important ways to the survival of their families, but were making them aware that their "vulnerability due to their lack of rights" was shared by women from other social sectors.

In the Peruvian case, it is outstanding how organized groups of women from different backgrounds have developed a systematic capacity to propose measures for overcoming discrimination and to find solutions to the concrete problems that people face in society. The problem is that they do not have sufficient resources nor state support to carry out their ideas on a broader scale, and that urgent needs have kept them from growing beyond a vision that remains fragmentary.

85 Since 1993 more workers participate in the informal sector than the formal one. Within the informal sector there has been a rise in the number of micro-enterprises and self-employed, most of whom work as street vendors.

86 The average number of children in 1970-75 was 6.0, while in 1990-95 it was 3.6. (FLACSO and Instituto de la Mujer, 1994.)

The progress in favour of women's rights achieved in the previous decade, and consolidated by the work and resources of NGOs and women's organizations in recent years, has had an observable impact in greater awareness of their rights among certain sectors of women, and in a change in attitude regarding exercising such rights.[87]

By pointing to growing awareness of the subjective aspects of discrimination, we do not mean to detract importance from the state's approach to setting norms for dealing with this issue, such as the establishment of mechanisms to assure the equitable participation of women in positions of power.[88] It is also discriminatory for the state to resist giving recognition to the autonomous expressions of women's organizing and to refuse to consider their proposals.[89]

The result is the exclusion of women from any organized participation in policy discussions and decision-making at several levels on economic, political and social issues. Everything seems to indicate that the government prefers to implement policies based on charity rather than carry on a dialogue with organizations which put forth demands and propose alternative ways of resolving the problems of the poor. State charity policies are based on direct individual handouts of food, measuring success by the numbers of beneficiaries, without taking into consideration the autonomous organization of the beneficiaries. This is especially true if the organization has ever taken a stance that diverges from official policy. The government has sought to justify its recent decision to turn the Glass of Milk Programme over to district administrators arguing that it decentralizes a programme which used to be city-wide, but the decision actually de-legitimizes popular organizations and lays the groundwork for the service to be re-organized on the basis of a different census, outside of the old Glass of Milk Committees.

The presence of popular organizations in local initiatives plays a central role. Perhaps there is no direct route between leadership of "survival" organizations and access to roles of political representation, but the dynamism of women's organizations in local development projects cannot be denied.

2.4.2. Indigenous Peoples

Subordination due to race or ethnic group is a subject that is not well studied in Peru, in fact it is avoided. Few are willing to speak out publicly against the racism evident in the treatment that "official" Peruvian society has given to the indigenous issue. From the most open repression to government attitudes of paternalism, the insertion of indigenous people in the official life of Peru has never been complete. There is the problem of open exclusion, but there is also one of attitudes derived from the deep social and ethnic conflict wrought by the Spanish Conquest in Peru.

State policies toward indigenous people were for centuries oriented toward controlling them, based on tax policies and forced labour. Every economic cycle in Peru has been accompanied by the intensive use of unpaid or semi-slave labour (on the guano islands, in the jungle and in the mines) which allowed for the extraction of wealth without great labour costs.

Then the paternalist policies of President Leguía (1919-1930), which sought to utilize the "Indian question" demagogically as part of a clientelistic policy for subordination, coincided with the emergence of the "indigenist" school, made up of analysts, politicians, intellectuals and scientists. But none of these initiatives were able to truly transform the basic problem underlying the suffering of indigenous peoples in Peru: land tenure.

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87 Interview with Community Kitchens and Guzmán and Pinzás, 1995.

88 As was pointed out by "Foro-Mujer" with their proposal for gender quotas in the law on political parties.

89 As was pointed out by leaders of the National Commission of Community Kitchens in an interview in October 1995 where they explained that with the help of NGOs the organization drew up an alternative food policy in terms of national food security, contrary to the indiscriminate importation of foodstuffs which currently dominates policy thinking. The Commission also worked on health policy criticizing the fact that state health campaigns rely heavily on unpaid labour. They also put forth a defence of free education from primary to secondary school. See Comisión Nacional de Comedores, 1995.

The military government of Velasco Alvarado decreed and implemented a radical agrarian reform which liquidated the latifundios and transformed them into production cooperatives and socially responsible agrarian firms. It is yet to be seen how much these measures actually benefitted Peru's indigenous people. While the Velasco reforms did put an end to shameful forms of exploitation, they also unleashed new conflicts which, added to the economic crisis that followed, sowed chaos and paralysis in the countryside.

Indigenous forms of association regarding the land survived until the decade of the 1980s, but bit by bit they were substituted by an explosive process of land division that made broader associative models not viable. The economic crisis and the collapse of the state's role in promoting development put an end to that option and gave rise to a regressive process which continues to this day, in which the concentration of lands in the hands of private business is once again becoming the rule and is presented as the true "modernization" of Peruvian agriculture.

According to a study carried out by the Andean Commission of Jurists, in 1994 in Peru there were 9.1 million indigenous people, although percentages oscillate according to the source consulted between 22.5% and 47% of the national population.[90] Within this population there is great ethnic and cultural diversity, expressed in a multitude of linguistic groups. These peoples have their own organizations, authorities, and mechanisms of social regulation and conflict resolution.

In the Andean region, there are two large groups: Aymaras and Quechuas. The Quechua population constitutes the largest native population in the countries of South America. However, the massive mestizaje they have experienced makes it difficult to identify Peru's indigenous peoples. In the Amazon there a large number of groups: the National Institute of Statistics and Information located 1,335 native communities there in a preparatory study for the 1993 National Census. The criteria for identifying these communities were based on family relationships and ethnic groupings, to which the factor of territory was added as a basis for settlement of native communities. Economic, political and social process over the past twenty years have affected the modus vivendi of these groups dramatically, placing several of them on the verge of extinction (through annihilation or acculturation).[91]

Peru is one of few countries in Latin America that has ratified Convention 169 of the International Labour Organization, adopted in 1989 and in force in the country since February 1995. This ratification commits the Peruvian state to adjust its domestic laws to match the dictates of this important international instrument. However, there is a negative precedent: Convention 107 of the ILO, also on indigenous peoples, was not enforced, despite its formal ratification.

Laws to liberalize regulation of natural resources, in contrast, have had great effect on indigenous peoples. Their use of land and water was guaranteed, at least formally, by specific regulations that protected communal rights. The Constitution of 1993 altered this, eliminating imprescriptibility (which barred acquisition by simple possession), inalienability (which prohibited sales) and inembargability (which barred seizure for unpaid debts) of the lands of peasant and native communities. The land tenure law deepened these changes, allowing private companies to make use of communal lands for agro-industrial operations.

The debate on the proposed water law has yet to occur, but it is being resisted by both native communities and peasant ones. It is worth recalling that part of the Letter of Intention that Peru signed with the International Monetary Fund implied the absolute deregulation of natural resources, a situation which threatens to annihilate communities and to suppress their ancestral identity.

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90 The 9.1 million figure is cited in a report of the World Bank and another by Latin American Newsletters.

91 The Ashaninkas, inhabitant of some of the most beautiful lands in Peru (the Central Jungle) have lived a drama difficult to retell in this short space. Abandonment by the state for hundreds of years was worsened by the eruption of political violence that turned the Ashaninka into an "instrument" in the strategies of terrorist groups and the state's counterinsurgent struggle. See Coordinadora Nacional de Derechos Humanos, 1994 and CAAAP.

Democratic Institutions

The coup d'etat of April 1992, launched, in the words of the President, "to achieve pacification, liberal modernization and national development", interrupted twelve years of democratic institutional rule founded on the Constitution of 1979.[92] The coup opened a new phase in Peru's political life, although it did not constitute, as some claim, a fundamental rupture in its history, rather the result of the long slow weakening of the social fabric, of political organizations and of civil society.

However, significant changes have occurred since the coup regarding state institutions and the legal framework that regulates citizen relations. These legal and institutional reforms did not follow a line pre-determined by the authors of the coup. The government of "emergency and national reconstruction" was obliged by international pressure to call a Democratic Constituent Congress and later to adopt a new Constitution.[93] For similar reasons, recent events revealed a readjustment in the institutional framework, basically regarding economic policy.[94]

3.1. Constitution of 1993

The Constitution of 1993 was an indirect product of the coup d'etat, but several other factors converged to play a particular role in the writing of Peru's new Magna Carta. A first explicit motivation to replace the 1979 Constitution was the need "to offer clear and simple rules for modernizing the state and society."[95] This was the reason behind the push to reduce the number of articles and to merge issues in the new text. A second characteristic was the change in the national economic and financial framework. The old Constitution established the "social market economy" as the regulating principle for economic relations, a term which though overly ambiguous reflected a consensual formula among the partisans of a free market and those whose approach was based on state regulation and intervention (from several viewpoints).

The 1993 Constitution seeks to provide the necessary juridical framework for the total liberalization of the economy, introducing a market system and the non-intervention of the state as the basic principles. It is true that these premises seem less absolute when examining tax policy,[96]

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92 See the Basic Law of the Government of Emergency and National Reconstruction, as well as Fujimori's speech on April 6, 1992. The implicit reasons for the coup are in the realm of speculation, since the principal actors remain in the shadows, hiding behind the image of President Fujimori. In this context the actors who supported the coup quickly entered into a relationship of mutual dependence with the government. For this reason, a hypothesis which seems valid to us is that those conditions were imposed by various sectors, gradually manifested in the anti-terrorist legislation, the framework laws for privatization and the promotion of certain economic interests.

93 On April 5, 1992 the Government of Emergency and National Reconstruction was established and until December of that year it performed all executive and legislative functions of the state. What's more, it controlled the judiciary to such a degree that its capacity to a critical actor in the process was annulled. The mass media, although they were preempted on the night of the coup, in general were respected.

94 An important cabinet shuffle in April 1996 has been interpreted as a political decision by the President to push economic reform and, fundamentally, privatizations. The new Prime Minister, Pandolfi, comes from the private insurance sector.

95 Statement by Fujimori, August 1993. This was repeated explicitly by official party representatives at the Democratic Constituent Congress.

96 The relationship between the free market and tax policy is not entirely clear. In any case, taxes have risen significantly in Peru, reaching 35% of personal income for dependent workers.

for example, but nevertheless they imply a profound transformation, affecting even the legal status of the lands of peasant and native communities.[97]

One consequence of this liberal vision of economic relations is expressed, directly and indirectly, in the constitution's approach to economic, social and cultural rights. While the Constitution of 1979 recognized such rights as fundamental, the current one places them in a separate chapter, differentiating them from "fundamental rights". Effects of this vision can also be found in the constitutional regulation of labour relations, which along with the labour legislation that followed gives priority to the creation of wealth by individual private initiative and discriminates against permanent workers.[98]

All functions of the state in relation to social policy are affected by the new constitutional framework. The progressive substitution of the State Pension System by private pension fund administrators is a good example of the restriction of the state in favour of private enterprise. The obligation of the state to provide social security is still recognized, but this is to be achieved via the private sector, making the state's obligation rather ambiguous.[99]

Another substantive aspect of the 1993 Constitution is the regulation of national security issues and the legal framework for the Armed Forces. In general, it can be said that several articles adopted by the Democratic Constituent Congress were a reflection of the particular moment and were not the result of long-term political vision. Such is the case of broadening the application of the death penalty and extending the jurisdiction of military justice over civilians. The same logic can also be found in the reduction of the legal status bestowed on international treaties, particularly those related to human rights.

The death penalty in Peru has not been applied as in other countries; Peru is considered a "de facto abolitionist" country.[100] The 1979 Constitution did not dare take the step of absolute abolition, and chose to maintain it for one unusual crime: treason in external war. Article 140 of the new Constitution extends the reach of the death penalty with an ambiguous and somewhat contradictory formula to include any act of treason or the crime of terrorism in a situation of "war", either internal or external.

A later consultative opinion from the Inter-American Court of Human Rights regarding Article 140 established that states can be held responsible for dictating laws that contradict established concepts of human rights. After a period of debate, which included a petition for constitutional reform signed by over 50,000 citizens, Article 140 seems to have been "forgotten" even by those who justified and sponsored its inclusion in the Constitution. Since no law to implement the article has been passed, it is technically not possible to apply the death penalty, and it is likely that any application would be cause for international liability as noted by the Inter-American Court of Human Rights.[101] In any case, the mere existence of constitutional authority for the use of the death penalty is a permanent threat to Peruvians' right to life. Nonetheless, the simple existence of this constitutional disposition is a permanent threat to the right to life of Peruvians.

97 See chapter on Indigenous Peoples.

98 The weakness of social institutions and popular organizations, as well as the general apathy of the population regarding the Constituent Congress, explains in part why many of the social advances achieved in 1979 were lost without much discussion in 1993.

99 Six pension fund administrators currently operate in Peru. The state pension system continues to function under the Peruvian Social Security Institute, although the recent resignation of the chair of its board has renewed the debate about privatizing the entire system and about promoting private health care companies.

100 See Amnesty International , "Cuando el Estado es el que mata : los derechos humanos frente a la pena de muerte". Madrid. EDAI, 1989, 315 pp.

101 The Consultative Opinion of the Court (OC 14/94) did not rule on the incompatibility of the death penalty and the enjoyment of human rights, rather on the hypothetical consequences for a state that decrees laws which contradict its international obligations.

Military justice in Peru dates from the origins of the Republic, when caudillos used military officers to provide summary judgements of opponents or deserters from their cause. Slowly, its jurisdiction was restricted until it was confined to cases of "military crimes" and, a dangerous addition, "crimes of office".[102]

The Constitution of 1979 did not resolve the issue, since it specifically confirmed the application of military justice to said crimes of office. It is by virtue of that disposition that the Supreme Court systematically assigned cases of human rights violations to the military justice system, which usually ended up shelving the charges. The Constitution of 1993 broadens the reach of military justice, making it applicable to civilians in cases of alleged treason and terrorism. This extension of jurisdiction is an aspect of the constitution for which more implementing legislation has been developed, via laws on terrorism and treason.[103]

Along with the death penalty and military jurisdiction over civilians, an excess of nationalist sentiment caused the Constituent Congress of 1993 to introduce changes in the way international treaties are regulated, changes which constitute serious backpedalling as far as the promotion and defense of human rights is concerned. The Constitution of 1979 stipulated that treaties would take precedence over domestic legislation in case of any conflict in their application or interpretation. And Article 105 of that Magna Carta mandated that human rights dispositions of treaties should have constitutional status, while a final article gave "constitutional" ratification to the International Covenant on Civil and Political Rights and the American Convention on Human Rights. The Constitution of 1993 considers treaties to be of the category of laws.[104] It also removes the constitutional recognition of human rights precepts and copies a formula utilized by Spain in which constitutional norms on human rights are interpreted according to international treaties.[105]

These changes have caused two collisions with international law precisely regarding matters of human rights protection. The first occurred when the Inter-American Court of Human Rights analyzed the compatibility of a domestic legal disposition of a state with the American Convention. The second occurred when a judicial resolution decreed the amnesty law to be inapplicable in light of its incompatibility with the right to judicial protection consecrated in international instruments.[106]

3.2. Dynamic of the State

According to the analysts consulted, any process of democratic modernization of the state ought to include three essential elements: democratization of decision-making; rationalization of public spending; and optimization of public institutions according to previously designated objectives.[107] These three requirements, within an overall strategy, would make a state respond effectively to the expectations of the population, while maintaining the stability of macro-economic variables.

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102 There is no clear definition of such crimes (*"delitos de función"*). There have been attempts to broaden the concept to include any action committed by a member of the security forces at any moment when in a region declared to be in a state of emergency (D.S. 191-91 PCM). This regulation was annulled but the principle is applied when settling jurisdictional disputes in favour of the military courts.

103 See section which describes the situation of innocent people detained under the anti-terrorist legislation.

104 Article 200 of the current Constitution stipulates that "norms which are of the category of law, such as international treaties" can be declared unconstitutional.

105 This norm also exists in the Colombian Constitution, but in both the Colombian and Spanish cases there are other guarantees regarding conflicts between treaties and domestic law which ensure the application of the former in matters of human rights.

106 See chapter II on human rights (2.1.2).

107 See Lowenthal 1993, and Touraine 1994.

The impact of structural adjustment processes on states is the subject of continual reflection in Latin America. Even the World Bank has noted its concern regarding how little prepared Latin America's states are for the challenges of the post-adjustment period.[108] As has already been pointed out, transformations in health-care, education and employment policies will require much more imagination and consensus than the simple reduction of inflation or control of the budget deficit.

The economic adjustment unleashed in Peru in 1991 was not designed in concert with strategies that linked stabilization to state reform. Loyal to the dictates of the International Monetary Fund, as specified in successive letters of intention, the government applied a policy of cutting back certain state agencies, particularly those linked to state enterprises and the executive branch.

At the same time, the government created certain public agencies to be run according to rules typical of private enterprise. Such is the case of the Institute for the Defense of the Consumer and Intellectual Property (INDECOPI), the Commission on Privatizations (COPRI) and the Superintendency of Tax Administration (SUNAT). They form part of the state even though their labour relations and the manner in which they make decisions are closer to the private sector. A great part of the financing of these agencies comes from the World Bank and other international entities. They are, without doubt, the examples by which the state hopes to demonstrate its efficiency.[109]

The creation of the Ministry of the Presidency under the government of Alan García responded to the need to gain maximum control over the flow of resources. According to statistics from the 1995 National Budget, this Ministry controls 40% of the central government's total revenue. Nominally under the charge of a minister, key decisions are made directly by the President of the Republic, which has provided him with the resources to build schools and highways without going through other branches of the government. On top of this the law allows this "super-ministry" to supervise the flow of resources from the international community. The National Development Institute and specifically the Programme to Support Repopulation (PAR) depend on it.[110]

The parts of the state charged with developing social policy (Ministries of Labour, Health, Education, etc.) seem to have been excluded from key decisions, even those which affect them directly. Political control over the management of public resources has reached the extreme of assigning the Armed Forces the job of building highways, without public bidding or competition, causing discontent among private construction firms.[111]

Municipal governments, which ought to be at the centre of democratic modernization, have been forgotten and have not been included in any programme for rationalization of public spending. By laws decreed directly by the Executive Power (Legislative Decree 776) the appropriation of resources has been reassigned towards smaller municipalities, leaving the largest ones (departmental capitals) near bankruptcy. In the specific case of Metropolitan Lima, the government's offensive has included the transfer of important attributes to district municipalities.

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108 See Moises Naim, "Post-Adjustment Blues," document circulated by Internet on the World Bank Home Page. Also of interest is a recent study by British economist Victor Bulmer-Thomas in his book "The New Latin American Economic Model and its Impact on Income Distribution and Poverty."

109 This approach, considered to be "paradigmatic", has been utilized more recently in other sectors within certain ministries and, as will be touched on below, in the administration of the Judiciary.

110 The other important sector of the executive is without a doubt the Ministry of Economics and Finance, due to its role as the "cashier" and as the key intermediary between international financial organisms and other parts of the state. Tensions within the executive, if they exist, are kept in check by the decrease in ministers' decision-making power—to the point that some call them "secretaries" for the president.

111 The immense majority of public works carried out in the most recent period have been attributable directly to the Presidency of the Republic, and many of them were built by the Army Corps of Engineers, without much oversight of the resources assigned. It is much more difficult for a comptroller to provide oversight and supervision to jobs undertaken in the name of President Fujimori himself, than in other parts of the government.

Behind all this lies a halting approach to modernization. While public spending is rationalized and greater efficiency is sought in certain sectors, public resources are disproportionately concentrated in other sectors and some realms of the state are totally deprived of any decision-making function. The influence of Fujimori over public institutions is large, but not absolute. Certain state institutions have begun to regain some autonomy, as in the case of some institutions related to the administration of justice. It is also interesting to observe the evolution of the Public Defender's Office since an independent figure was named to lead that important institution.

3.3. Judicial Reforms

Access to justice is a critical aspect for any analysis of society and state in Peru. Judges who are poorly paid and even more poorly distributed, along with formal procedures that are barely accessible to the common citizen, have been the characteristics of a judicial system inherited from the formalist traditions of the Spanish Viceroyalty. The description of judges in Peruvian literature is perhaps the best analysis there is on these longstanding structural problems.

For many years, the Peruvian justice system operated as a place where a certain group of elite lawyers found professional self-worth and advancement. Primarily in Lima, large firms of lawyers got all the "important" cases, and judges naturally came from the same private firms. This situation had two outcomes: the judicial system was hardly dependent on the political powers of the day, but was co-opted to serve the interests of the dominant sectors of society.

Reforms undertaken in the first phase of the military government sought to control the Judiciary politically and economically. Bit by bit, issues which were particularly sensitive for the military government were removed from the Judiciary's area of responsibility.[112] The decline of the judicial function gave rise to a process of serious deterioration of the quality of judges. Elite lawyers were no longer interested in taking part in a Judiciary they could control by other means. Though outstanding exceptions did exist, these only confirmed the rule.[113]

Corruption and dependence on political power have been the primary characteristics of the Judiciary in recent years. Poorly paid judges enter into a vortex of illegal payments which make the cost of any trial rise artificially but significantly. Lawyers, even those of the elite, end up incorporating into their usual way of doing business this series of additional payments, which naturally are illegal and which constitute a considerable extra cost to their clients. These extra payments are made to the judge, but also to the judge's secretaries, other employees and even to the judicial police. The fact that such behaviour is an established practice makes it easy to justify the entire system.

Because of this perverse circle, judges earn money, not as mandated by law, but according to the economic capacity of the litigants. In a related matter, one which has become much more serious lately, the control of the Judiciary by politicians is exercised by their power to approve or reject budgets for that branch of government. Under such economic control, judges can do little to maintain the independence of the Judiciary or their own autonomy.[114]

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112 That led to the creation of the Agrarian Courts, the Labour courts and the Court for Labour Communities. The judiciary (formally one body) was reduced to resolving patrimonial and penal cases. These special courts continued to operate even after the restoration of formal democracy. The Constitution of 1979 recognized their existence and foresaw their progressive incorporation into a single judicial power with exclusive jurisdiction. Two exceptions were noted in that Constitution, and again in the Constitution of 1993: Military Courts and the so-called "Arbitration Court". The former will be dealt with below. Regarding arbitration, even though technically it is not a "court", it is a mechanism that is commonly used, principally by the private sector to resolve conflicts over ownership.

113 In a poll taken among law students at the Catholic University, one of the major private universities in the country, only 5% answered yes to the following question: "Would you become a judge at their current salary?"

114 Naturally the corruption of judges is not only due to low salaries. There is a mixture of personal and structural factors to be considered.

Corruption is also evident in the way judges position themselves relative to the government. And it commonly appears in civil trials which touch on "hot" issues for politicians, such as when unions seek to block layoffs. Indirect manoeuvres, like getting superior court judges to intimidate lower judges with "suggestions", are often used when particular interests seek to exercise influence.

It is worth emphasizing that an important process of replacing judges (primarily in lower courts) is currently underway. The risk is that honest and efficient judges will be progressively isolated in the midst of a system that does not help them overcome these problems.[115]

Among the measures taken following the coup d'etat of April 5 was the removal of over 130 judges and prosecutors at all levels of the Judiciary. In addition, the judges of the Constitutional Court, the Attorney General and most of the sitting Supreme Court judges were dismissed. One of the motives for the coup was the leniency of civilian judges in cases of terrorism, so the government proceeded to remove a second large area from their responsibility: jurisdiction for crimes of aggravated terrorism (euphemistically called "treason to the nation") was awarded to the military courts.

To replace dismissed judges, the government designated provisional judges, an extremely negative formula for any attempt at judicial reform. It is widely accepted that provisional judges raised the levels of corruption considerably and firmly subjected the Judiciary to the political decisions of the Executive.[116] At the end of 1992 Congress designated a Magistrates Honour Jury to nominate and appoint new judges and prosecutors. When its labours were finished, this ad-hoc organism was replaced by a National Council of Magistrates, charged in the new Constitution with evaluating judges and when necessary dismissing them.

The work of the Magistrates' Honour Jury was widely debated among jurists. Some consider that the results were significant and positive in that they allowed an irregular situation to be overcome, adding that most of the judges selected have performed well. However, others indicate that the selection procedure for new magistrates was in itself irregular and contrary to the Constitution, adding that there was not proper transparency nor public accountability regarding the profile of the judges selected. Lastly, they criticize the apparent "negotiations" with politicians over the introduction of certain judges close to the government.

Without taking sides in this debate, we should note that judges continue to labour with poor salaries and unsatisfactory working conditions for properly carrying out their duties. Some are still working under a provisional arrangement in several provinces in the country's interior.[117]

In 1995 an ambitious programme of judicial reform was initiated with the formation of a Reorganizing Commission, which replaced the Executive Council of the Judiciary and the Plenary of the Supreme Court. The objective was to differentiate between jurisdictional and administrative functions within the Judiciary. This commission designated an executive secretary from outside the Judiciary to head up that budget envelope.[118] The powers accorded to the Executive Secretary have been progressively increased.

Finally, in a decision that is still cause for debate, in June 1996 Congress created the Council for Judicial Coordination. This body is to coordinate the general policy direction for the development and organization of institutions linked to the justice system.

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115 Judges today are named by the Magistrates' Honour Jury and despite obvious limitations, they have managed to take collective action to improve the system and defend their own interests.

116 See the successive reports of the National Human Rights Coordinating Body.

117 The work of the National Magistrates Council is too recent to evaluate, but it is worth noting that in its few months in operation it has managed to name prosecutors and judges outside of political pressures, and this has had good results. There is also the recently created National Magistrates Academy, which is to provide ongoing training to judges and prosecutors, as well as to prepare future candidates for those posts.

118 Commander Juan Dellepiani, a former Navy officer, is the person in that post.

Formally, the Council will be made up of the heads of the Supreme Court, the Constitutional Court, the Ministry of Justice, the National Magistrates Council, and the Attorney General, as well as representatives of the Bar Association and state and private universities.

Even though it is logical to seek greater coordination within the chaotic judicial system, the provisional nature of the regulations in the law are cause for concern. The law itself, in several articles described as "transitory, complementary and final," establishes that "during the period of reorganization" the Council will be made up only of the Judiciary (represented by the Reorganizing Commission and not by the Supreme Court), the Public Prosecutors and the National Magistrates Council. On the Council as well there will be an Executive Secretary with voice and vote. What is worrisome is that this "leaner and temporary" Council will operate until December 31, 1998, and may prolong its own mandate indefinitely.

The resignation of the Executive Secretary of the Council for Judicial Coordination in late 1996, has virtually paralyzed the body. In reality, it is the Executive Committee of the judiciary that controls the resources and the power necessary to centralize the judicial reform.

Public Prosecutors are also to be reorganized, thus indirectly the reorganization of the Judiciary is being prolonged indefinitely, since it is left to the discretion of the "leaner" Council for Judicial Coordination to determine time-lines for the reorganization of both institutions. These reorganizing processes suspend the applicability of several dispositions of the law creating the Ministry and substitute them by "temporary" regulations, such as the right of the Executive Secretary of the Public Prosecutors or the Judiciary to suspend magistrates "who do not behave themselves in the manner appropriate to their office." Some of these aspects were declared unconstitutional by the Constitutional Court in November, 1996.

In the law and in practice, what is occurring is a drastic and radical suppression of the legal powers of the Supreme Court, and soon also of the National Attorney General's Office. The Executive Secretaries (who formally work for the respective Executive Councils) end up as the real power in the judicial system. In the specific case of the Public Prosecutor's Office, it is worrisome that power has been concentrated in the person of the Attorney-General, with three laws having been decreed in the past four years to secure her re-election. Due to strong pressures, the person occupying that position was obliged to resign in December 1996. She retains, however, the important functions as President of the Executive Committee of the Public Prosecutor's Office.

In all these decisions there are some positive elements and others that are quite worrisome. Among the former we should point to the fact that the Supreme Court had shown itself to be absolutely incapable of reforming the court system; that the creation of the Council for Judicial Coordination separates administrative from jurisdictional functions, making criteria for the former more efficient than the simple interplay of specific interests; and finally that it allows for reforms to be carried out within the system without requiring a whole series of slow and inefficient regulations to be drawn up first.

The risks are as or more important than the supposed benefits of these reforms. It has been pointed out, for example, that removing administrative functions from the Supreme Court weakens the real power of the Judiciary; that the figure of the Executive Secretary has more power than a member of the Supreme Court; that it will be much easier for the Executive to control the Judiciary because of this reform; that jurisdictional autonomy is at grave risk when its existence depends not on the Judiciary but on a bureaucracy; and that the concentration of power does not necessarily lead to greater efficiency, since it makes it harder to control corruption at the top.

The authors of this study are not in a position to emit a definitive judgement on the most recent measures adopted. However, we do believe there is a need for better mechanisms of control over the decisions being taken, including a more active supervisory role for civil society institutions such as the Bar Association and the universities. In addition, we maintain that the provisional nature of the current Council for Judicial Coordination ought to cease as soon as possible, considering the negative experiences of previous reorganizations that went on too long and in practice weakened still further the independence of the Judiciary and the autonomy of judges. Lastly, we foresee enormous risks if these decisions are broadened to include jurisdictional matters, which ought to continue being the exclusive domain and competence of the judicial organ.[119]

One important area within judicial reform is the diversification of mechanisms for resolving conflicts. Specialists agree that strengthening mechanisms of arbitration has helped relieve the logjam of cases judges face, but this does not assist other sectors of the population who cannot afford such a "quasi-private" mechanism for seeking justice.

A useful mechanism that ought to be strengthened in this regard are justices of the peace. This system, derived from compromises between central authority and local leaders, allows for conciliation and mediation to become the means for conflict resolution. The Constitution of 1993 mandates the popular election of justices of the peace, although this has yet to be put into practice. The use of justices of the peace could adequately reflect "alternative" means of conflict resolution, incorporating "communal" or "indigenous" justice and bestowing on them formal recognition. The development of this system, however, has received little encouragement from the state. Although there have been justices of the peace for years, their functions have not been adapted to the challenges of the modernization of justice. Only a few private organizations have been working on this subject.[120]

Legal procedures have been slowly transformed. One obstacle that remains in this area grows out of the substitution of the obsolete Penal Procedural Code by a modern one. The process of drawing up a new code has been underway since 1991, but has suffered several setbacks and is currently suspended indefinitely. The code was to introduce profound reforms to penal procedures, fundamentally in relation to the model for trying the accused. The objective is to replace the old "inquisitorial" system by a contradictory model which would ensure speedy trials and judicial guarantees. At the same time, the reforms seek to remove excessive powers from the police regarding the investigation of crimes and to raise the profile of the Public Prosecutor. The resistance of the police, backed up by the Executive, has led to the postponement of the new code. Penal procedures continue to be carried out according to an obsolete system that differentiates the "investigating judge" from the "judging judge".[121]

Efforts to make these judicial reforms comprehensive face serious challenges in those areas that are particularly sensitive for the government. We are referring fundamentally to the role of military justice and the judicial treatment of violations of human rights committed by public servants. Moveover, the capacity of the judicial system, including the Public Prosecutor's Office, to effectively control corruption amongst public officials, has been called into question by recent events.

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119 In Colombia, for example, there is a high degree of coordination by means of the Judicial Branch, which groups all organs related to the administration of justice. But in the Colombian case, the independence of judicial organs has been scrupulously respected, at least formally, as they, and not any ad-hoc committees, retain the responsibility of appointing their managers and directors without any interference from Congress or the Executive.

120 The Andean Commission of Jurists presented a project for strengthening justices of the peace in Bolivia and Peru to the respective Ministries of Justice in 1995.

121 Where important advances have been made is in civil law and the rights of minors (by means of the Children's and Adolescent's Code). The latter incorporates the dispositions of the Universal Convention the Rights of the Child, overcoming the old notion that minors are "objects of protection" and establishing them as "social subjects of rights".

As has been mentioned, the military justice system has been given the constitutional right to try civilians for the crime of "treason to the nation". This right has been broadly exercised without any substantial controls or oversight on the part of the civilian justice system. Unlike other legal systems, in Peru the decisions of the Military Supreme Court cannot be overturned by any other judicial organ.[122]

Since 1992, over 700 people have been sentenced by military tribunals to terms that range from 15 years to life.[123] The number of people found innocent is very low, which indicates a propensity of these tribunals to find those tried under their jurisdiction guilty without much investigation. These and other aspects reveal an absolute lack of guarantees of due process. The modifications introduced in the anti-terrorist legislation between 1993 and 1996 have not reduced these problems of military justice, since not even appeals fall outside its jurisdiction.

Military justice has also been extended into other areas, including trials of members of the Armed Forces who took part in a conspiracy in September 1992. It has also been applied to retired officers, even though the law itself specifies that officers recover all their civil and political rights once they retire, including of course the right to an impartial judge. These trials have been undertaken by the Army as reprisals for the legitimate right to state an opinion or as forms of control and intimidation of officers who do not share the views of the high command. Military jurisdiction appears to be overly "flexible" when it assumes competence in certain cases thought to involve acts of corruption by military officials themselves. Such was the case of the trial of a drug trafficker for "treason" violating the relevant legislation. Military justice authorities adopted the same attitute in other similar cases, when there were accusations of bribes to members of the military High Command or of the military-controlled National Intelligence Service (SIN).

The most recent case was that of the arrest and trial of General Rololfo Robles Espinoza, who had accused the SIN of having plotted the "La Cantuta" massacre and of having participated in an attack against a mass media in Puno. His arrest, over and above being violent, was ordered for supposed "insult to the Armed Forces and to his superiors".

All these considerations point to a progressive broadening of the responsibilities of military justice, which, in the name of a supposed but misplaced efficiency, seeks to keep conflicts particularly sensitive to the government under wraps. If one considers that military judges are not lawyers and that the structure of military courts makes them totally dependent on the Executive and on military commanders, we have a dangerous problem for any serious attempt at reforming Peru's justice system.

Moreover, the actions of civilian judges and tribunals in matters related to human rights have generally been permissive and not very autonomous. In relation to civil and political rights, civilian judges have repeatedly declined jurisdiction in favour of military judges, under the specious argument that they were cases involving "crimes of office." The Supreme Court has not defended the jurisdiction of civilian courts in such cases, few of which have actually been tried in civilian court, and instead have been resolved by absolution or by dropping the case.

The behaviour of judges in certain recent cases is an exception that confirms the rule. The decision of a judge on the inapplicability of the amnesty law is a good example of what ought to be considered ethically possible within a judge's proper role.

122 They can only be reviewed by the Military Supreme Court itself, according to a law that reformed the anti-terrorist legislation.

123 The statistics vary according to the source. According to the National Human Rights Coordinating Body, no fewer than 700 persons have been defended by private human rights organizations, which only take up the cases of persons they consider innocent. According to Father Hubert Lanssiers, representative of the President of the Republic on the Pardons Commission, the number of innocents in jail surpass 1500. A recent study by the Institute for Legal Defense indicates that the correct number could be 1,189, or 24% of those imprisoned for terrorism or treason. See *Revista Ideele*, No. 84, Feb-Mar 1996.

But even in that case, higher courts decided to consolidate impunity. There have been other examples of judges acting independently, which cause us to remain relatively hopeful that the unacceptable trend toward impunity can be reversed.[124]

In sum, while interesting partial initiatives to improve the efficiency of the justice system have been undertaken, key areas continue to escape all attempts at comprehensive modernization, with particular implications for the exercise of human rights.

124 In this sense the training of judicial officers (judges and prosecutors) is of fundamental importance.

Conclusions

1 The protection of human rights in Peru is intimately linked to the process of democratization, which in the past fifteen years has suffered several setbacks. The Peruvian state, faced with the task of overcoming the difficult economic straits inherited from previous governments, and of resolving the armed conflict, has not fulfilled its important commitments to the international community in the area of human rights, and has set up an authoritarian political system based on ad-hoc rules, wrapping itself in democratic formalities while ignoring the rules of truly democratic process.

2 Despite the existence of several interesting proposals for judicial reform, the administration of justice continues to suffer from serious problems, particularly regarding the excessive formalistic steps required in judicial procedures and the Judiciary's weak capacity to affirm its independence from the Executive. Simultaneously, the role of Peru's judges is limited by the public's reticence to accept their legitimacy and by material limitations on carrying out their work. Sensitive areas within the administration of justice do not seem to have been included in any serious attempt at reform: the application of anti-terrorist legislation, general impunity in cases related to human rights violations, and the role given to military justice.

3 The legal-institutional framework erected on the basis of the Constitution of 1993 and the coup d'etat of April 1992 contains a new model of society and the state which gives priority to economic modernization, understood as open markets and deregulation, and to strengthening of centralized control over decision-making. This is reflected on the one hand by the abandonment of key state functions regarding the provision of public services.

4 Presidential power, reaffirmed by the reelection of 1995, is backed not only by a constitutional regime that favours the chief executive, but also by broad popular support for a tacit link between civilian power and the Armed Forces as a condition for keeping the peace. For ordinary Peruvians it is more important to know that the country has a minimum of economic stability and is not directly exposed to political violence from internal war, than to be concerned about the government operating by democratic rules. In other words, there is still no social movement firmly demanding democracy.

5 The modernization of the state is oriented toward strengthening a centralized system that concentrates decision-making power in a few offices, such as the Ministry of the Presidency, while weakening the rest of the ministries and the other levels of

government. The institutions which control economic policy are run by highly qualified technicians and, in some cases, are financed by resources from the World Bank or the Inter-American Development Bank. The purpose of such technocratic administration, which is highly dependent on politicians, is to maintain Peru's credibility with international financial institutions and investors.

6. The macro-economic stabilization achieved in recent years has not been accompanied by structural reforms in several sectors. Priority has been given to the modernization of certain public institutions while attention to social policies has been postponed. The ministries in charge of health and education, plus the municipalities with their own peculiarities, seem to have been explicitly excluded from any serious attempt at modernization.

7 The process of democratizing civil society in the decade of the 1970s was interrupted by populist practices which, though they offered immediate benefits to the poor, weakened the medium-term potential for development. The coming years will only offer new possibilities for democratization if the citizenry manages to take advantage of the legal framework for exercising direct democracy contained in the Constitution of 1993 in order to open up channels for participating in political decision-making, to broaden electoral options, and to establish mechanisms for holding government accountable.

8 The fact that the political parties are in crisis places limits on the potential for building democracy since there are no political mediators between the citizenry and the state. New ways of organizing party politics are needed, ones capable of interpreting the interests and demands of citizens and transforming them into policy proposals. Otherwise, Peru will be stuck in a system which is formally democratic, but which in the practice of the Executive, especially the President of the Republic, is deeply authoritarian.

9 Urban and rural social movements, based on a wide diversity of existing associations, are networks of support for resolving people's most urgent daily needs, above all in the case of women's organizations. These have the effect of building "horizontal" social relations. The most important result is the ongoing dialogue with local and national state officials which has set new terms for responding to the social demands of the poor.

10 The rupture between the popular/community leadership and the political leadership frustrates the potential for democratic development that expresses the diversity of Peruvian society regarding culture, ethnicity, gender and age. A renewal of political culture on the basis of democratic values is required to inspire a new political praxis.

11 Trying to resolve the most urgent problems derived from the economic situation and political violence has absorbed the energy of people who are organized, while weakening their capacity to propose alternative solutions to those being promoted by the government. The opening to the international market, the recession of domestic production, and the weakness in the trade balance are not perceived as major economic problems for three reasons: the growth of self-employment schemes to achieve

immediate income without questioning the country's macro-economic policies has been favoured; direct income has been generated by the policy of privatizations; and new debts have been contracted which allowed for significant investment in focused social programmes.

12 One of the sectors most affected both by political violence and by the de-regulation of natural resources are indigenous peoples and peasant communities. The new law on lands and the proposed laws on water and titling threaten to extinguish some of the key characteristics of indigenous identity. This attitude of the state is contrary to the content of ILO Covention 169.

13 Longstanding discrimination due to ethnicity/culture and gender has been worsened in the context of poverty. Efforts to correct discrimination have not been eliminated, but these are certainly not institutionalized to a sufficient degree. State social policy is based on utilizing the unpaid volunteer labour of large numbers of women who help out with state campaigns in health, education, food and housing. There is no recognition of autonomous organizations as valid interlocutors for making and implementing state policies. Despite some innovations on the institutional level, there is still no coherent legal protection of women's human rights, either in the law or in its application.

14 Popular and social organizations in Peruvian society are being increasingly fragmented and weakened. The broadening of citizen participation of previous years, which gave rise to new social actors, has not found adequate channels for expression. An important symptom of this is the crisis of the political parties and their incapacity to give voice to opposition sentiment. The lack of mechanisms for holding the Executive accountable is another sign of the weakness of the links between society and the state. However, these adverse circumstances are also giving rise to new forms of social organization, a new, more concrete way of answering people's needs. Politics is no longer just a discourse for buying votes or talking about local or national power. It is a debate on the best way to resolve problems.

15 International pressure, on the basis of monitoring activities, regarding the government's lack of compliance with human rights obligations has evoked a number of reactions. In some cases it helped transform legal parameters that were in violation, while in others it made public opinion aware of abuses committed by the state. Economic conditionality clauses have been questioned in the name of national sovereignty, but the debate over the precedence of international human rights protection over national norms has yet to occur.

Proposals for Promoting the Protection of Human Rights and Political Agenda for Democratic Strengthening in Peru

Given the panorama in Peru in the middle of the 1990s, the day when state policies will be respectful of human rights and linked to a process of national democratization and the building of viable local development alternatives seems as yet far off. The democratic challenge is to find ways to strengthen internal processes that act on the web of institutional power "from the top and from the bottom", linking up all sorts of efforts, some individual, others collective, national and international. The challenge is to alter the monotony of accommodation to a demanding world market that does not take into account the building of democracy or the quality of life of its people, who struggle to affirm their diverse and overlapping identities, demonstrating their constant desire to improve and to build their own country.

The proposals that follow are inspired by the desire to offer ideas for a political agenda for strengthening democracy, a task that requires a joint effort by international actors, national bodies, and Peruvian civil society if the praxis of social life is to find some correlation with ever greater respect for human rights. Each proposal contains both a description of the problem and the proposed response of the actors involved.

1. Development of a Social Understanding of Human Rights

The Problem: Lack of a human rights culture which includes the totality of people's lives. Predominance of power relations transferred from society to the legal and political order. Violence is easily justified and there is less concern if such violations harm people who are discriminated against or are powerless. Human rights are confused with security rights, both conceptually and in the most important activities of human rights groups. The integrated vision of human rights promoted by the 1993 World Human Rights Conference is not well known. Finally the is a lack of an overall gender perspective.

The Proposal: The promotion of an overall vision of human rights is required so that it can become the ethical framework for the state and for society. Each group and each person ought to develop the capacity to acknowledge their own human rights, starting from the diversity of individual and collective identities (belonging to a certain ethnic or cultural group, gender, generation, social sector, etc.). Discrimination can only be confronted with integrated plans that involve the state and as well as all of society.

Diverse social groupings have to take on an active role in the defense of immediate security rights (as in the case of summary justice by faceless tribunals for the crime of terrorism, or civic campaigns on the amnesty law) to end the current isolation of human rights groups. At the same time people's

awareness of the links between democracy, development and human rights must be rebuilt. The justice system needs to be modified to bring it into line with the principles of international protective law, so that the unity among civil, political, social, economic and cultural rights is established.

The Actors: First of all human rights organizations should broaden their own perspective and promote ever broader arenas for their work, involving all sorts of organized social groupings (women, youth, workers, service-recipients, consumers, small and mid-sized businessmen, etc.), especially their local expressions. To transform the culture of rights will require the commitment of the mass media and a transformation of the formal and informal content of the educational system. Legislative bodies also have the task of adapting domestic law so that it broadens citizen protection.

2. Responsibility of the State and its Inter-Action with Civil Society

The Problem: Formal protection in the legal system does not guarantee its enforcement. State bodies systematically deny responsibility. The justice system is used to justify violations by state organisms, arguing that the causal dynamic is the existence of subversive groups. The argument is made that violations by the Armed Forces is "exceptional". There is little space for an autonomous Judiciary. The predominance of the Executive, without adequate checks and balances, risks accentuating the authoritarian-technocratic aspects of the political system which generate impunity, especially when the mediating capacity of political institutions is weak and the political influence of the Armed Forces is disproportionately strong. The re-centralization of the state has diminished the creative capacity of local expressions of the state, especially local government. The virtual non-existence of political organizations weakens the potential for democratic rebuilding.

The Proposal: The structure of the state must be transformed democratically, and the mentality of government authorities, especially in the Judiciary, must be modified. It is imperative that the role of the Armed Forces in a democratic society be redefined so that they are subordinated to the norms of the Rule of Law. Constitutional principles ought to prevail throughout the legal order. The courts ought to guarantee the concrete application of justice with full respect for human rights, especially when enforcing constitutional guarantees. Local governments ought to recover the democratic momentum they once had when designing policies jointly with grassroots organizations to deal with the specific problems of each region. The combination of modernization and democratization is essential if we are to overcome the current impasse regarding the protection of human rights. The reform of political parties and their role as democratic mediators must be promoted, along with the explicit practice of respecting the expression of ideas by the government and the opposition.

The Actors: Besides debating the state's responsibilities openly and without fear of reprisals, training programmes must be designed for employees of the justice system, by means of joint activities with professional associations, NGOs, social organizations and the judicial organisms themselves. Specific training on human rights ought to be offered to the Armed Forces and the police. The Constitutional Court and the Public Defenders Office are fundamental institutions for citizens to demand effective protection regarding human rights legally recognized in the country. The technical and political effectiveness of development plans and welfare programmes requires the active participation of the target population.

3. Role of the International Community in the Context of Globalization

The Problem: It is no longer possible to find solutions to the problems of Peruvian democracy without taking into account the global processes in which the country is inserted. Even political representation lacks the framework of sovereignty that once supported it. Foreign powers condition national decision-making though international organisms.

The Proposal: New ways of acting on the international scene to protect human rights must be found. New interpretations of the right to sovereignty and the principle of non-interference in internal affairs are needed. One of the arenas for action is international politics, by means of negotiations with multilateral bodies and with those foreign governments that have economic interests in the country. Another path opened in the United Nations is that of a privileged dialogue between states and civil society organizations. It is important that Peru sign and ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others to improve the legal framework for protecting the human rights of women.

The Actors: International oversight by the United Nations and the Organization of American States, as well as the pressure exerted by organizations such as Amnesty International and Americas Watch, is important to achieve modifications in the way nations treat human rights, especially where national social and political organizations have been weakened. NGOs, professional and social organizations need to be supplied with information on how to intervene in the various international fora for protecting human rights. International mechanisms for coordination and long-distance communication (such as electronic networks) among human rights organizations of a number of countries ought to be encouraged in order to create new ways of understanding international solidarity.

4. Support for Social Actors

The Problem: Peru's social movements have been weakened but not destroyed, and the same is true of its political parties. There are dynamic elements, such as women especially at the local level, that ought to be supported. What makes the current period difficult is the brusque transformation of institutional and organizational reference points for channelling democratic proposals from civil society, amid the predominance of de facto powers, like "technocratized" state institutions, ever more technological mass media and internationalized business groups. It is also important to recognize that Peru has not experienced a peace process between social actors and the state. A dynamic of "winners and losers" hardly favourable to the tasks of social and political reconstruction still prevails.

The Proposal: Questioning of forms of organization that today appear obsolete or that exist for repressive ends, such as the case of "Self-Defense Committees" or some "Rondas Campesinas", must be supported. And creative efforts to formulate policies that are explicitly meant to build peace must be supported, as should new forms of political expression. Backing should be provided to the various ways social actors are finding to coordinate their activities, to organize community participation, to support dynamic elements like women, to resolve local problems and to hold state authorities accountable for their actions. From this basis social actors can improve their negotiating positions and agreements with the "de facto powers": the state technocracy, the mass media and internationalized business groups.

The Actors: It is crucial to encourage the efforts of groups—women, youth workers (both within and outside unions), small and medium-sized businessmen, consumers, urban poor, peasant farmers, professionals, migrants, civic interest associations—to "reconstruct" or "recompose" civil society. Civil society can be rebuilt on the basis of responding to concrete problems. The political and social leadership needs state and social support and encouragement.

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LIST OF INTERVIEWS

- Ligia ALENCASTRE, Popular Education leader en el Qosco.(1994)
- Teresa APARCANA, President of the Metropolitan Coordination Committee for the Glass of Milk in Metropolitan Lima. (1994)
- Javier AROCA, Officer in charge of human rights at the Centro de Antropología Amazónica y Aplicación Práctica. (1996)
- Jorge AVENDAÑO, Member of the National Congress, Former Dean of the Lawyers' College. (1995)
- Diana AVILA, Officer in charge of the Andean region at the Council of projects for Latinamerican refugees (CPRL).(1995)
- Maruja BARRIG, Researcher on social and gender issues. (1994)
- Josefina BERNA, Health Secretary at the Metropolitan Coordination Committee for the Glass of Milk.(1994)
- Enrique BERNALES, Former Senator (1996)
- Luciano CARPO, Coordinator of TERRA NOVA, Italian cooperation agency, works on projects undertaken by indigenous peoples' organizations in the Peruvian Selva. (1995)
- Pilar COLL, Pastoral Teacher and former Executive Secretary of the National Human Rights Coordination (1995 and 1996)
- Javier DIEZ CANSECO, Congressman (1994-1995)
- Francisco EGUIGUREN PRAELI, Director of the Academia Nacional de la Magistratura and Constitutional Expert (1995-1996)
- Donatilda GAMARRA, President of the Popular Women's Federation of Villa El Salvador.(1994)
- Diego GARCIA SAYAN, Executive Director of the Andean Commission of Jurists(1996)
- Ruth GERONIMO. Deputy-director of the FONDO DE COMPENSACION PARA EL DESARROLLO (FONCODES).(1995)
- María Isabel HASEMBANK, Civil Court Judge in Lima (1996).
- Rosa LANDABERRY, Elvira TORRES, Yolanda MARILUZ, Angelica ABANTO, members of the Coordinadora Nacional de COMEDORES POPULARES (popular kitchens). (1995)
- Silvia LOLI and Grecia ROJAS, Servicio Legal Centro de la Mujer Peruana "Flora Tristan". (1995)
- Magda MATEOS, Director of the Asociacion Amauta del Qosco.(1994)
- Rosa María MUJICA, Instituto Peruano de Educación en Derechos Humanos y la Paz. Former Executive Secretary of the Coordinadora Nacional de Derechos Humanos (1996)
- Nancy PALOMINO, Expert in health policies. (1995)
- Celia QUIÑONES, Municipal manager of Villa El Salvador. (1995)
- Concepcion QUISPE, Women's Affairs Secretary at the Confederacion Campesina del Perú.
- José RAMIREZ, Journalist, Human Rights Trainer in Qosco.
- José RISCO, General Secretary of the Federación de Trabajadores de la Construcción Civil (1995).
- César SAN MARTIN CASTRO, Criminal lawyer. Former member of the Superior Court of Lima (1995)
- German SILVA, Federacion Departamental de Campesinos del Qosco. (1994)

- Francisco SOBERON, Coordinator of the Asociacion Pro-Derechos Humanos (APRODEH). (1994-1995)
- Giulia TAMAYO, Director of the Centro de la Mujer Peruana "Flora Tristan" and member of the Comite para la Defensa de los Derechos de la Mujer (CLADEM).(1995)
- Rosa Dominga TRAPASSO, member of the Movimiento El Pozo, an NGO working towards the eradication of prostitution and for the social reinsertion of women working in the sex industry.(1995)
- Jose TOLEDO, Engineer and Former Executive Secretary of the Fundacion para el Desarrollo del Agro.(1994)
- Matilde URETA, Psychoanalyst, member of CEDAP, an NGO dedicated to the study of social psychology. (1994-1995)
- Oscar UGARTECHE, Economic analyst, specialized in external debt issue, member of the Movimiento Homosexual de Lima (MHOL). (1994-1995)
- Roxana VASQUEZ, Regional Coordinator of CLADEM.(1995)
- Susana VILLARAN, Executive Secretary of the Coordinadora Nacional de Derechos Humanos.(1995)